

COMMODITY FUTURES MODERNIZATION ACT OF 2000

SEPTEMBER 6, 2000.—Ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

R E P O R T

[To accompany H.R. 4541]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 4541) to reauthorize and amend the Commodity Exchange Act to promote legal certainty, enhance competition, and reduce systemic risk in markets for futures and over-the-counter derivatives, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendment .....	2
Purpose and Summary .....	45
Background and Need for Legislation .....	45
Hearings .....	49
Committee Consideration .....	49
Committee Votes .....	49
Committee on Government Reform Oversight Findings .....	49
New Budget Authority, Entitlement Authority, and Tax Expenditures .....	49
Committee Cost Estimate .....	50
Congressional Budget Office Estimate .....	50
Federal Mandates Statement .....	52
Advisory Committee Statement .....	53
Constitutional Authority Statement .....	53
Applicability to Legislative Branch .....	53
Section-by-Section Analysis of the Legislation .....	53
Changes in Existing Law Made by the Bill, as Reported .....	67

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Commodity Futures Modernization Act of 2000”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Purposes.

**TITLE I—COMMODITY EXCHANGE ACT AMENDMENTS**

Sec. 101. Definitions.

Sec. 102. Agreements, contracts, and transactions in foreign currency, government securities, and certain other commodities.

Sec. 103. Legal certainty for excluded derivative transactions.

Sec. 104. Excluded electronic trading facilities.

Sec. 105. Hybrid instruments.

Sec. 106. Futures on securities.

Sec. 107. Transactions in exempt commodities and swap transactions.

Sec. 108. Protection of the public interest.

Sec. 109. Prohibited transactions.

Sec. 110. Designation of boards of trade as contract markets.

Sec. 111. Derivatives transaction execution facilities.

Sec. 112. Derivatives clearing organizations.

Sec. 113. Common provisions applicable to registered entities.

Sec. 114. Exempt boards of trade.

Sec. 115. Suspension or revocation of designation as contract market.

Sec. 116. Authorization of appropriations.

Sec. 117. Preemption.

Sec. 118. Consideration of costs and benefits and antitrust laws.

Sec. 119. Contract enforcement between eligible counterparties.

Sec. 120. Special procedures to encourage and facilitate bona fide hedging by agricultural producers.

Sec. 121. Rule of construction.

Sec. 122. Technical and conforming amendments.

Sec. 123. Privacy.

Sec. 124. Report to Congress.

Sec. 125. Effective date.

Sec. 126. International activities of the Commodity Futures Trading Commission.

**TITLE II—SECURITIES ACTS AMENDMENTS**

**Subtitle A—Amendments**

Sec. 201. Definitions under the Securities Exchange Act of 1934.

Sec. 202. Regulatory relief for markets trading security future products.

Sec. 203. Regulatory relief for intermediaries trading security future products.

Sec. 204. Special provisions for interagency cooperation.

Sec. 205. Maintenance of market integrity for security future products.

Sec. 206. Special provisions for the trading of security future products.

Sec. 207. Clearance and settlement.

Sec. 208. Amendments relating to registration and disclosure issues under the Securities Act of 1933 and the Securities Exchange Act of 1934.

Sec. 209. Amendments to the Investment Company Act of 1940 and the Investment Advisers Act of 1940.

Sec. 210. Preemption of state gaming and bucket shop laws.

**Subtitle B—Conforming Amendments to the Commodity Exchange Act**

Sec. 221. Jurisdiction of Securities and Exchange Commission; other provisions.

Sec. 222. Application of the Commodity Exchange Act to national securities exchanges and national securities associations that trade security futures.

Sec. 223. Notification of investigations and enforcement actions.

**Subtitle C—Effective Date**

Sec. 231. Effective date.

**SEC. 2. PURPOSES.**

The purposes of this Act are—

(1) to reauthorize the appropriation for the Commodity Futures Trading Commission;

(2) to streamline and eliminate unnecessary regulation for the commodity futures exchanges and other entities regulated under the Commodity Exchange Act;

(3) to transform the role of the Commodity Futures Trading Commission to oversight of the futures markets;

(4) to provide a statutory and regulatory framework for allowing the trading of futures on individual securities and narrow-based securities indexes in a manner equivalent with the treatment of other similar securities;

(5) to provide the Commission jurisdiction over certain retail foreign exchange transactions and bucket shops that may not be otherwise regulated;

(6) to promote innovation for futures and derivatives and to reduce systemic risk by enhancing legal certainty in the markets for certain futures and derivatives transactions;

- (7) to reduce systemic risk and provide greater stability to markets during times of market disorder by allowing the clearing of transactions in over-the-counter derivatives through appropriately regulated clearing organizations; and
- (8) to enhance the competitive position of United States financial institutions and financial markets.

## TITLE I—COMMODITY EXCHANGE ACT AMENDMENTS

### SEC. 101. DEFINITIONS.

Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

- (1) by redesignating paragraphs (1) through (7), (8) through (12), (13), (14), (15), and (16) as paragraphs (2) through (8), (16) through (20), (22), (23), (25), and (29), respectively;

- (2) by inserting before paragraph (2) (as redesignated by paragraph (1)) the following:

“(1) **ALTERNATIVE TRADING SYSTEM.**—The term ‘alternative trading system’ means an organization, association, or group of persons that is registered as a broker or dealer pursuant to section 15(b) of the Securities Exchange Act of 1934 (except paragraph (11) thereof) and that performs the functions commonly performed by an exchange (as defined in section 3(a)(1) of such Act) but that is exempt from the definition of the term ‘exchange’ under such section 3(a)(1) by rule or regulation of the Securities and Exchange Commission on terms that require compliance with regulations of the trading functions of such organization, association, or group of persons.”;

- (3) by inserting after paragraph (8) (as redesignated by paragraph (1)) the following:

“(9) **DERIVATIVES CLEARING ORGANIZATION.**—

“(A) **IN GENERAL.**—The term ‘derivatives clearing organization’ means a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to a derivative agreement, contract, or transaction—

“(i) enables each party to the derivative agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties;

“(ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by parties in the derivatives clearing organization; or

“(iii) otherwise provides clearing services or arrangements that mutualize or transfer among parties in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the parties.

“(B) **EXCLUSIONS.**—The term ‘derivatives clearing organization’ does not include an entity, facility, system, or organization solely because it arranges or provides for—

“(i) settlement, netting, or novation of obligations resulting from agreements, contracts, or transactions, on a bilateral basis and without a centralized counterparty;

“(ii) settlement or netting of cash payments through an interbank payment system; or

“(iii) settlement, netting, or novation of obligations resulting from a sale of a commodity in a transaction in the spot market for the commodity.

- “(10) **ELECTRONIC TRADING FACILITY.**—The term ‘electronic trading facility’ means a trading facility that—

“(A) operates by means of an electronic network; and

“(B) maintains a real-time audit trail of bids, offers, and the matching of orders or the execution of transactions.

- “(11) **ELIGIBLE COMMERCIAL PARTICIPANT.**—The term ‘eligible commercial participant’ means a party or entity described in paragraph (11)(A)(i), (ii), (v), or (viii) or paragraph (11)(C), who, in connection with its business—

“(A) has a demonstrable capacity or ability, directly or through separate contractual arrangements, to make or take delivery of the underlying physical commodity;

“(B) incurs risks, in addition to price risk, related to the commodity; or

- “(C) is a dealer that regularly provides hedging, risk management, or market-making services to the foregoing entities.
- “(12) ELIGIBLE CONTRACT PARTICIPANT.—The term ‘eligible contract participant’ means—
- “(A) acting for its own account—
    - “(i) a financial institution;
    - “(ii) an insurance company regulated by a State or a foreign government (including a regulated subsidiary or affiliate of such an insurance company);
    - “(iii) an investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an eligible contract participant);
    - “(iv) a commodity pool that—
      - “(I) has total assets exceeding \$5,000,000; and
      - “(II) is formed and operated by a person subject to regulation under this Act or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract participant);
    - “(v) a corporation, partnership, proprietorship, organization, trust, or other entity—
      - “(I) that has total assets exceeding \$10,000,000;
      - “(II) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by an entity described in subclause (I), in clause (i), (ii), (iii), (iv), or (vii), or in subparagraph (C); or
      - “(III) that—
        - “(aa) has a net worth exceeding \$1,000,000; and
        - “(bb) enters into an agreement, contract, or transaction in connection with the conduct of the entity’s business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity’s business;
    - “(vi) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation—
      - “(I) that has total assets exceeding \$5,000,000; or
      - “(II) the investment decisions of which are made by—
        - “(aa) an investment advisor or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or this Act;
        - “(bb) a foreign person performing a similar role or function subject as such to foreign regulation;
        - “(cc) a financial institution; or
        - “(dd) an insurance company regulated by a State or a foreign government (including a regulated subsidiary or affiliate of such an insurance company);
    - “(vii)(I) a governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;
    - “(II) a multinational or supranational government entity; or
    - “(III) an instrumentality, agency, or department of an entity described in subclause (I) or (II);
    - “(viii)(I) a broker or dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be an eligible contract participant unless the broker or dealer or foreign person also meets the requirements of clause (v) or (xi);
    - “(II) an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(b), 78q(h));

“(III) an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(i)));

“(ix)(I) a futures commission merchant subject to regulation under this Act or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the futures commission merchant or foreign person is a natural person or proprietorship, the futures commission merchant or foreign person shall not be considered to be an eligible contract participant unless the futures commission merchant or foreign person also meets the requirements of clause (v) or (xi); or

“(II) an affiliate of a registered futures commission merchant concerning the financial activities of which the registered person makes and keeps records under section 4f(c)(2)(B) of this Act;

“(x) a floor broker or floor trader subject to regulation under this Act in connection with any transaction that takes place on or through the facilities of a registered entity or an exempt board of trade, or any affiliate thereof, on which such person regularly trades; or

“(xi) a natural person with total assets exceeding \$10,000,000;

“(B)(i) a person described in clause (i), (ii), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), acting as broker or performing an equivalent agency function on behalf of another person described in subparagraph (A) or (C); or

“(ii) an investment adviser subject to regulation under the Investment Advisers Act of 1940, a commodity trading advisor subject to regulation under this Act, a foreign person performing a similar role or function subject as such to foreign regulation, or a person described in clause (i), (ii), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), in any such case acting as investment manager or fiduciary (but excluding a person acting as broker or performing an equivalent agency function) for another person described in subparagraph (A) or (C) and who is authorized by such person to commit such person to the transaction; or

“(C) any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person; except that entities that are eligible contract participants under clause (v), (vi), (vii)(I) or (III), or (xi) of subparagraph (A) or subparagraph (C) and own and invest on a discretionary basis less than \$50,000,000 in investments, shall only be considered eligible contract participants if the agreement, contract, or transaction is offered by, and entered into with, an entity that is listed in any of subclauses (I) through (VI) of section 2(c)(2)(B)(ii) of this Act.

“(13) EXCLUDED COMMODITY.—The term ‘excluded commodity’ means—

“(A) an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, or index or measure of inflation;

“(B) any other rate, differential, index, or measure of economic or commercial risk, return, or value that—

“(i) is not within the control of any party to the relevant contract, agreement, or transaction; and

“(ii) is not based in substantial part on the value of a limited number of commodities not described in subparagraph (A) that have a finite supply; or

“(C) an occurrence, extent of an occurrence, or contingency associated with commercial or economic consequences beyond the control of the parties to the relevant contract, agreement, or transaction.

“(14) EXEMPT COMMODITY.—The term ‘exempt commodity’ means a commodity that is not an excluded commodity and is not an agricultural commodity.

“(15) FINANCIAL INSTITUTION.—The term ‘financial institution’ means—

“(A) a corporation operating under the fifth undesignated paragraph of section 25 of the Federal Reserve Act (12 U.S.C. 603), commonly known as ‘an agreement corporation’;

“(B) a corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.), commonly known as an ‘Edge Act corporation’;

“(C) an institution that is regulated by the Farm Credit Administration;

“(D) a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752));

“(E) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

“(F) a foreign bank or a branch or agency of a foreign bank (each as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101(b)));

“(G) a financial holding company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841));

“(H) a trust company; or

“(I) a similarly regulated subsidiary or affiliate of an entity described in any of subparagraphs (A) through (H).”;

(4) by inserting after paragraph (20) (as redesignated by paragraph (1)) the following:

“(21) HYBRID INSTRUMENT.—The term ‘hybrid instrument’ means a deposit (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) offered by a financial institution, or a security, having 1 or more payments indexed to the value, level, or rate of 1 or more commodities.”;

(5) by inserting after paragraph (23) (as redesignated by paragraph (1)) the following:

“(24)(A) MARGIN.—The term ‘margin’, when used with respect to a security future product, means the amount, type, and form of collateral required to secure any extension or maintenance of credit, or the amount, type, and form of collateral required as a performance bond related to the purchase, sale, or carrying of a security future product, and all other uses of collateral related to the purchasing, selling, or carrying of a security future product.

“(B) The terms ‘margin level’ and ‘level of margin’, when used with respect to a security future product, mean the amount of margin required to secure any extension or maintenance of credit, or the amount of margin required as a performance bond related to the purchase, sale, or carrying of a security future product.

“(C) The terms ‘higher margin level’ and ‘higher level of margin’, when used with respect to a security future product, mean a margin level established by a contract market that is higher than the minimum amount established by the Securities and Exchange Commission pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934.”;

(6) by inserting after paragraph (25) (as redesignated by paragraph (1)) the following:

“(26) NARROW-BASED SECURITY INDEX.—The term ‘narrow-based security index’ means an index of securities on which contracts for future delivery are not permitted under section 2(a)(1)(C) of this Act, including any interest therein or based on the value thereof.

“(27) OPTION.—The term ‘option’ means an agreement, contract, or transaction that is of the character of, or is commonly known to the trade as, an ‘option’, ‘privilege’, ‘indemnity’, ‘bid’, ‘offer’, ‘put’, ‘call’, ‘advance guaranty’, or ‘decline guaranty’.

“(28) ORGANIZED EXCHANGE.—The term ‘organized exchange’ means a trading facility that—

“(A) permits trading—

“(i) by or on behalf of a person that is not an eligible contract participant; or

“(ii) by persons other than on a principal-to-principal basis; or

“(B) has adopted (directly or through another nongovernmental entity) rules that—

“(i) govern the conduct of participants, other than rules that govern the submission of orders or execution of transactions on the trading facility; or

“(ii) include disciplinary sanctions other than the exclusion of participants from trading.”; and

(7) by adding at the end the following:

“(30) REGISTERED ENTITY.—The term ‘registered entity’ means—

“(A) a board of trade designated as a contract market under section 5;

“(B) a derivatives transaction execution facility registered under section 5a;

“(C) a derivatives clearing organization registered under section 5b; or

“(D) a board of trade designated as a contract market under section 5f.

“(31) SECURITY.—The term ‘security’ means a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) or section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)).

“(32) SECURITY FUTURE.—The term ‘security future’ means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange

Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982).

“(33) SECURITY FUTURE PRODUCT.—The term ‘security future product’ means a security future or any put, call, straddle, option, or privilege on any security future.

“(34) TRADING FACILITY.—

“(A) IN GENERAL.—The term ‘trading facility’ means a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions by accepting bids and offers made by other participants that are open to multiple participants in the facility or system.

“(B) EXCLUSIONS.—The term ‘trading facility’ does not include—

“(i) a person or group of persons solely because the person or group of persons—

“(I) constitutes, maintains, or provides an electronic facility or system that enables participants to negotiate the terms of and enter into bilateral transactions as a result of communications exchanged by the parties and not from interaction of multiple orders within a predetermined, nondiscretionary automated trade matching algorithm; or

“(II) is a derivatives clearing organization;

“(ii) a government securities dealer or government securities broker, to the extent that the dealer or broker executes or trades agreements, contracts, or transactions in government securities, or assists persons in communicating about, negotiating, entering into, executing, or trading an agreement, contract, or transaction in government securities (as the terms ‘government securities dealer’, ‘government securities broker’, and ‘government securities’ are defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); or

“(iii) facilities on which bids and offers, and acceptances of bids and offers effected on the facility, are not binding.”.

**SEC. 102. AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN FOREIGN CURRENCY, GOVERNMENT SECURITIES, AND CERTAIN OTHER COMMODITIES.**

Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) is amended by adding at the end the following:

“(c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN FOREIGN CURRENCY, GOVERNMENT SECURITIES, AND CERTAIN OTHER COMMODITIES.—

“(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this Act (other than section 5b or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in—

“(A) foreign currency;

“(B) government securities;

“(C) security warrants;

“(D) security rights;

“(E) resales of installment loan contracts;

“(F) repurchase agreements in an excluded commodity; or

“(G) mortgages or mortgage purchase commitments.

“(2) COMMISSION JURISDICTION.—

“(A) AGREEMENTS, CONTRACTS, AND TRANSACTIONS THAT ARE FUTURES TRADED ON AN ORGANIZED EXCHANGE.—This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction described in paragraph (1) that is—

“(i) a contract of sale of a commodity for future delivery (or an option thereon), or an option on a commodity (other than foreign currency or a security or group or index of securities), that is executed or traded on an organized exchange; or

“(ii) an option on foreign currency and is executed or traded on an organized exchange that is not a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934.

“(B) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN RETAIL FOREIGN CURRENCY.—This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction in foreign currency that—

“(i) is a contract of sale for future delivery (or an option on such a contract) or an option; and

“(ii) is offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is—

“(I) a financial institution;

“(II) a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o–5) or a futures commission merchant registered under this Act;

“(III) an associated person of a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o–5), or an affiliated person of a futures commission merchant registered under this Act, concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(b), 78q(h)) or section 4f(c)(2)(B) of this Act;

“(IV) an insurance company that is subject to State regulation (including a subsidiary or affiliate of such an insurance company);

“(V) a financial holding company (as defined in section 2 of the Bank Holding Company Act of 1956); or

“(VI) an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934).”.

#### **SEC. 103. LEGAL CERTAINTY FOR EXCLUDED DERIVATIVE TRANSACTIONS.**

Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) (as amended by section 102) is amended by adding at the end the following:

“(d) EXCLUDED DERIVATIVE TRANSACTIONS.—

“(1) IN GENERAL.—Nothing in this Act (other than section 5b or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in an excluded commodity if—

“(A) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants at the time at which the persons enter into the agreement, contract, or transaction; and

“(B) the agreement, contract, or transaction is not executed or traded on a trading facility.

“(2) ELECTRONIC TRADING FACILITY EXCLUSION.—Nothing in this Act (other than section 5a, 5b, or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in an excluded commodity if—

“(A) the agreement, contract, or transaction is entered into on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(12)(B)(ii) of this Act;

“(B) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants (as defined in sections 1a(12)(A), (B)(ii), and (C)) at the time at which the persons enter into the agreement, contract, or transaction; and

“(C) the agreement, contract, or transaction is executed or traded on an electronic trading facility.”.

#### **SEC. 104. EXCLUDED ELECTRONIC TRADING FACILITIES.**

Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) (as amended by section 103) is amended by adding at the end the following:

“(e) EXCLUDED ELECTRONIC TRADING FACILITIES.—

“(1) IN GENERAL.—Nothing in this Act (other than section 12(e)(2)(B)) governs or is applicable to an electronic trading facility that limits transactions authorized to be conducted on its facilities to those satisfying the requirements of sections 2(d)(2) and 2(h)(3) of this Act.

“(2) EFFECT ON AUTHORITY TO ESTABLISH AND OPERATE.—Nothing in this Act shall prohibit a board of trade designated by the Commission as a contract market or derivatives transaction execution facility, or an exempt board of trade, from establishing and operating an excluded electronic trading facility excluded under this Act pursuant to paragraph (1).”.

#### **SEC. 105. HYBRID INSTRUMENTS.**

Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) (as amended by section 104) is amended by adding at the end the following:

“(f) EXCLUSION FOR QUALIFYING HYBRID INSTRUMENTS.—

“(1) IN GENERAL.—Nothing in this Act (other than section 12(e)(2)(B)) governs or is applicable to a hybrid instrument that is predominantly a security or depository instrument.

“(2) PREDOMINANCE.—A hybrid instrument shall be considered to be predominantly a security or depository instrument if—

“(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with delivery of the hybrid instrument;



“(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

“(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

“(D) the hybrid instrument is not marketed as a contract of sale for future delivery of a commodity (or option on such a contract) subject to this Act.

“(3) MARK-TO-MARKET MARGINING REQUIREMENTS.—For the purposes of paragraph (2)(C), mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.”.

#### SEC. 106. FUTURES ON SECURITIES.

Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) (as amended by section 105) is amended by adding at the end the following:

“(g) Nothing in subsection (a)(1)(C) or (a)(1)(D) governs or applies to—

“(1) an agreement, contract, or transaction that is excluded under subsection (c) or (d) (whether or not the agreement, contract, or transaction is otherwise subject to this Act);

“(2) an electronic trading facility that is excluded under subsection (e); or

“(3) a hybrid instrument that is covered by an exclusion under subsection (f) or an exemption granted by the Commission under section 4(c) (whether or not the hybrid instrument is otherwise subject to this Act).”.

#### SEC. 107. TRANSACTIONS IN EXEMPT COMMODITIES AND SWAP TRANSACTIONS.

Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) (as amended by section 106) is amended by adding at the end the following:

“(h) LEGAL CERTAINTY FOR CERTAIN TRANSACTIONS IN EXEMPT COMMODITIES.—

“(1) Except as provided in paragraph (2) of this subsection, nothing in this Act shall apply to a contract, agreement or transaction in an exempt commodity which—

“(A) is entered into solely between persons that are eligible contract participants at the time they enter into the agreement, contract, or transaction; and

“(B) is not entered into on a trading facility.

“(2) An agreement, contract, or transaction described in paragraph (1) of this subsection shall be subject to—

“(A) sections 5b and 12(e)(2)(B) of this Act;

“(B) sections 4b and 4o of this Act and the regulations of the Commission pursuant to section 4c(b) of this Act proscribing fraud in connection with commodity option transactions, to the extent such agreement, contract, or transaction is not between eligible commercial participants and would otherwise be subject to those provisions; and

“(C) sections 6(c) and 9(a)(2) of this Act to the extent they prohibit manipulation of the market price of any commodity in interstate commerce, to the extent such agreement, contract, or transaction would otherwise be subject to those provisions.

“(3) Except as provided in paragraph (4) of this subsection, nothing in this Act shall apply to an agreement, contract, or transaction in an exempt commodity which—

“(A) is entered into on a principal-to-principal basis solely between persons that are eligible contract participants at the time at which the persons enter into the agreement, contract, or transaction;

“(B) entered into only between persons that are eligible contract participants (as defined in sections 1a(12)(A), (B)(ii), (B)(iii), and (C) at the time at which the persons enter into the agreement, contract, or transaction; and

“(C) is executed or traded on an electronic trading facility.

“(4) An agreement, contract, or transaction described in paragraph (3) shall be subject to—

“(A) sections 5a (to the extent so provided in section 5a(g)), 5b, and 12(e)(2)(B) of this Act;

“(B) sections 4b and 4o of this Act and the regulations of the Commission pursuant to section 4c(b) of this Act proscribing fraud in connection with commodity option transactions to the extent such agreement, contract, or transaction would otherwise be subject to those provisions;

“(C) sections 6(c) and 9(a)(2) of this Act, to the extent they prohibit manipulation of the market price of any commodity in interstate commerce and to the extent such agreement, contract, or transaction would otherwise be subject to those provisions; and

“(D) such rules and regulations as the Commission may prescribe if necessary to ensure timely dissemination by the electronic trading facility of price, trading volume, and other trading data to the extent appropriate, if the Commission determines that the electronic trading facility performs a significant price discovery function for transactions in the cash market for the commodity underlying any agreement, contract, or transaction executed or traded on the electronic trading facility.

“(i) APPLICATION OF THE ACT.—Nothing in this Act shall be construed (1) as implying or creating any presumption that (A) any agreement, contract, or transaction that is eligible for an exclusion or exemption from regulation under this Act or (B) any agreement, contract, or transaction that is not eligible for an exclusion or exemption from regulation under this Act is or would otherwise be subject to this Act or (2) as conferring jurisdiction on the Commission with respect to any such agreement, contract, or transaction, except as expressly provided in section 5a (to the extent so provided in section 5a(g)) and 5b.”.

#### **SEC. 108. PROTECTION OF THE PUBLIC INTEREST.**

The Commodity Exchange Act is amended by striking section 3 (7 U.S.C. 5) and inserting the following:

##### **“SEC. 3. FINDINGS AND PURPOSE.**

“(a) FINDINGS.—The futures contracts and options contracts that are subject to this Act are entered into regularly in interstate and international commerce and are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, and disseminating pricing information through trading in liquid, fair and financially secure trading facilities.

“(b) PURPOSE.—It is the purpose of this Act to serve the public interests described in subsection (a) through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission. To foster these public interests, it is further the purpose of this Act to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this Act and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants.”.

#### **SEC. 109. PROHIBITED TRANSACTIONS.**

Section 4c of the Commodity Exchange Act (7 U.S.C. 6c) is amended by striking “SEC. 4c.” and all that follows through subsection (a) and inserting the following:

##### **“SEC. 4c. PROHIBITED TRANSACTIONS.**

“(a) IN GENERAL.—

“(1) PROHIBITION.—It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction described in paragraph (2) involving any commodity if the transaction is used or may be used to—

“(A) hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity;

“(B) determine the price basis of any such transaction in interstate commerce in the commodity; or

“(C) deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

“(2) TRANSACTION.—A transaction referred to in paragraph (1) is a transaction that—

“(A)(i) is, is of the character of, or is commonly known to the trade as, a ‘wash sale’ or ‘accommodation trade’; or

“(ii) is a fictitious sale; or

“(B) is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price.”.

#### **SEC. 110. DESIGNATION OF BOARDS OF TRADE AS CONTRACT MARKETS.**

The Commodity Exchange Act is amended—

(1) by redesignating section 5b (7 U.S.C. 7b) as section 5e; and

(2) by striking sections 5 and 5a (7 U.S.C. 7, 7a) and inserting the following:

**“SEC. 5. DESIGNATION OF BOARDS OF TRADE AS CONTRACT MARKETS.**

“(a) APPLICATIONS.—A board of trade applying to the Commission for designation as a contract market shall submit an application to the Commission that includes any relevant materials and records the Commission may require consistent with this Act.

“(b) CRITERIA FOR DESIGNATION.—

“(1) IN GENERAL.—To be designated as a contract market, the board of trade shall demonstrate to the Commission that the board of trade meets the criteria specified in this subsection.

“(2) PREVENTION OF MARKET MANIPULATION.—The board of trade shall have the capacity to prevent market manipulation through market surveillance, compliance, and enforcement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

“(3) FAIR AND EQUITABLE TRADING.—The board of trade shall establish and enforce trading rules to ensure fair and equitable trading through the facilities of the contract market, and the capacity to detect, investigate, and discipline any person that violates the rules. Such rules may authorize—

“(A) an exchange of—

“(i) futures in connection with a cash commodity transaction;

“(ii) futures for cash commodities;

“(iii) transfer trades or office trades; or

“(iv) futures for swaps; and

“(B) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

“(4) TRADE EXECUTION FACILITY.—The board of trade shall—

“(A) establish and enforce rules defining, or specifications detailing, the manner of operation of the trade execution facility maintained by the board of trade, including rules or specifications describing the operation of any electronic matching platform; and

“(B) demonstrate that the trading facility operates in accordance with the rules or specifications.

“(5) FINANCIAL INTEGRITY OF TRANSACTIONS.—The board of trade shall establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into by or through the facilities of the contract market.

“(6) DISCIPLINARY PROCEDURES.—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.

“(7) PUBLIC ACCESS.—The board of trade shall provide the public with access to the rules, regulations, and contract specifications of the board of trade.

“(8) ABILITY TO OBTAIN INFORMATION.—The board of trade shall establish and enforce rules that will allow the board of trade to obtain any necessary information to perform any of the functions described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.

“(c) EXISTING CONTRACT MARKETS.—A board of trade that is designated as a contract market on the effective date of the Commodity Futures Modernization Act of 2000 shall be considered to be a designated contract market under this section.

“(d) CORE PRINCIPLES FOR CONTRACT MARKETS.—

“(1) IN GENERAL.—To maintain the designation of a board of trade as a contract market, a board of trade shall comply with the core principles specified in this subsection.

“(2) COMPLIANCE WITH RULES.—The board of trade shall monitor and enforce compliance with the rules of the contract market, including the terms and conditions of any contracts to be traded and any limitations on access to the contract market.

“(3) CONTRACTS NOT READILY SUBJECT TO MANIPULATION.—The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

“(4) MONITORING OF TRADING.—The board of trade shall monitor trading to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process.

“(5) POSITION LIMITATIONS OR ACCOUNTABILITY.—To reduce the potential threat of market manipulation or congestion, especially during trading in the

delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate.

“(6) EMERGENCY AUTHORITY.—The board of trade shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to—

“(A) liquidate or transfer open positions in any contract;

“(B) suspend or curtail trading in any contract; and

“(C) require market participants in any contract to meet special margin requirements.

“(7) AVAILABILITY OF GENERAL INFORMATION.—The board of trade shall make available to market authorities, market participants, and the public information concerning—

“(A) the terms and conditions of the contracts of the contract market; and

“(B) the mechanisms for executing transactions on or through the facilities of the contract market.

“(8) DAILY PUBLICATION OF TRADING INFORMATION.—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

“(9) EXECUTION OF TRANSACTIONS.—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions.

“(10) TRADE INFORMATION.—The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information for purposes of assisting in the prevention of customer and market abuses and providing evidence of any violations of the rules of the contract market.

“(11) FINANCIAL INTEGRITY OF CONTRACTS.—The board of trade shall establish and enforce rules providing for the financial integrity of any contracts traded on the contract market, including rules to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.

“(12) PROTECTION OF MARKET PARTICIPANTS.—The board of trade shall establish and enforce rules to protect market participants from abusive practices committed by any party acting as an agent for the participants.

“(13) DISPUTE RESOLUTION.—The board of trade shall establish and enforce rules regarding and provide facilities for alternative dispute resolution as appropriate for market participants and any market intermediaries.

“(14) GOVERNANCE FITNESS STANDARDS.—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other persons with direct access to the facility (including any parties affiliated with any of the persons described in this paragraph).

“(15) CONFLICTS OF INTEREST.—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market and establish a process for resolving such conflicts of interest.

“(16) COMPOSITION OF BOARDS OF MUTUALLY OWNED CONTRACT MARKETS.—In the case of a mutually owned contract market, the board of trade shall ensure that the composition of the governing board reflects market participants.

“(17) RECORDKEEPING.—The board of trade shall—

“(A) maintain full records of all activities related to the business of the contract market in a form and manner acceptable to the Commission for a period of at least 5 years;

“(B) make the records readily available during at least the first 2 years of the 5-year period and provide the records to the Commission at the expense of the person required to maintain the records; and

“(C) keep the records open to inspection by any representative of the Commission or the Department of Justice.

“(18) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall not—

“(A) adopt any rules or taking any actions that result in any unreasonable restraints of trade; or

“(B) impose any material anticompetitive burden on trading on the contract market.

“(e) CURRENT AGRICULTURAL AND METAL COMMODITIES.—

“(1) Subject to paragraph (2), a contract for purchase or sale for future delivery of an agricultural or metal commodity enumerated in section 1a(4) that is available for trade on a contract market, as of the date of the enactment of this subsection, may be traded only on a contract market designated under this section.

“(2) In order to promote responsible economic or financial innovation and fair competition, the Commission, on application by any person, after notice and public comment and opportunity for hearing, may prescribe rules and regulations to provide for the offer and sale of contracts for future delivery or options thereon to be conducted on a derivatives transaction execution facility.”.

**SEC. 111. DERIVATIVES TRANSACTION EXECUTION FACILITIES.**

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5 (as amended by section 110(2)) the following:

**“SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILITIES.**

“(a) IN GENERAL.—In lieu of compliance with the contract market designation requirements of section 5, a board of trade may elect to operate as a registered derivatives transaction execution facility if the facility is—

“(1) designated as a contract market and meets the requirements of this section; or

“(2) registered as a derivatives transaction execution facility under subsection (c).

“(b) REQUIREMENTS FOR TRADING FUTURES CONTRACTS OR OTHER DERIVATIVES TRANSACTIONS.—

“(1) IN GENERAL.—A registered derivatives transaction execution facility under subsection (a) may trade any futures contract (or option on such a contract) on or through the facility only by satisfying the requirements of this section.

“(2) REQUIREMENTS FOR UNDERLYING COMMODITIES.—A registered derivatives transaction execution facility may trade any futures contract only if—

“(A) the underlying commodity has a nearly inexhaustible deliverable supply;

“(B) the underlying commodity has a deliverable supply that is sufficiently large that the contract is not readily susceptible to manipulation;

“(C) the underlying commodity has no cash market; or

“(D) the Commission determines, based on the market characteristics, surveillance history, self-regulatory record, or capacity of the facility that trading in the futures contract is not readily susceptible to manipulation.

“(3) ELIGIBLE TRADERS.—To trade on a registered derivatives transaction execution facility, a person shall—

“(A) be authorized by the board of trade to trade on the facility; and

“(B)(i) be an eligible contract participant; or

“(ii) be a person trading through a futures commission merchant that—

“(I) is registered with the Commission;

“(II) is a member of a futures self-regulatory organization;

“(III) is a clearing member of a derivatives clearing organization; and

“(IV) has net capital of at least \$20,000,000.

“(4) TRADING BY CONTRACT MARKETS.—A board of trade that is designated as a contract market shall, to the extent that the contract market also operates a registered derivatives transaction execution facility—

“(A) provide a physical location for the contract market trading of the board of trade that is separate from trading on the derivatives transaction execution facility of the board of trade; or

“(B) if the board of trade uses the same electronic trading system for trading on the contract market and derivatives transaction execution facility of the board of trade, identify whether the electronic trading is taking place on the contract market or the derivatives transaction execution facility.

“(5) IMPERMISSIBLE PRODUCTS.—It shall be unlawful for any person to execute or trade a security future product or other future involving a security, except an exempt security as defined in section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982, on a designated transaction execution facility.

“(c) CRITERIA FOR REGISTRATION.—

“(1) IN GENERAL.—To be registered as a registered derivatives transaction execution facility, the board of trade shall demonstrate to the Commission that the board of trade meets the criteria specified in this subsection.

“(2) DETERRENCE OF ABUSES.—The board of trade shall establish and enforce trading rules that will deter abuses and has the capacity to detect, investigate, and enforce those rules, including means to—

“(A) obtain information necessary to perform the functions required under this section; or

“(B) use technological means to—

“(i) provide market participants with impartial access to the market; and  
 “(ii) capture information that may be used in establishing whether rule violations have occurred.

“(3) TRADING PROCEDURES.—The board of trade shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on the facilities of the board of trade. Such rules may authorize—

“(A) an exchange of—

“(i) futures in connection with a cash commodity transaction;  
 “(ii) futures for cash commodities;  
 “(iii) transfer trades or office trades; or  
 “(iv) futures for swaps; and

“(B) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the registered derivatives transaction execution facility or a derivatives clearing organization.

“(4) FINANCIAL INTEGRITY OF TRANSACTIONS.—The board of trade shall establish and enforce rules or terms and conditions providing for the financial integrity of transactions entered on or through the facilities of the board of trade, including rules or terms and conditions to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.

“(d) CORE PRINCIPLES FOR REGISTERED DERIVATIVES TRANSACTION EXECUTION FACILITIES.—

“(1) IN GENERAL.—To maintain the registration of a board of trade as a derivatives transaction execution facility, a board of trade shall comply with the core principles specified in this subsection.

“(2) COMPLIANCE WITH RULES.—The board of trade shall monitor and enforce the rules of the facility, including any terms and conditions of any contracts traded on or through the facility and any limitations on access to the facility.

“(3) MONITORING OF TRADING.—The board of trade shall monitor trading in the contracts of the facility to ensure orderly trading in the contract and to maintain an orderly market while providing any necessary trading information to the Commission to allow the Commission to discharge the responsibilities of the Commission under the Act.

“(4) DISCLOSURE OF GENERAL INFORMATION.—The board of trade shall disclose publicly and to the Commission information concerning—

“(A) contract terms and conditions;  
 “(B) trading conventions, mechanisms, and practices;  
 “(C) financial integrity protections; and  
 “(D) other information relevant to participation in trading on the facility.

“(5) DAILY PUBLICATION OF TRADING INFORMATION.—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the facility.

“(6) FITNESS STANDARDS.—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members, and any other persons with direct access to the facility, including any parties affiliated with any of the persons described in this paragraph.

“(7) CONFLICTS OF INTEREST.—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the derivatives transaction execution facility and establish a process for resolving such conflicts of interest.

“(8) RECORDKEEPING.—The board of trade shall—

“(A) maintain full records of all activities related to the business of the derivatives transaction execution facility in a form and manner acceptable to the Commission for a period of at least 5 years;

“(B) make the records readily available during at least the first 2 years of the 5-year period and provide the records to the Commission at the expense of the person required to maintain the records; and

“(C) keep the records open to inspection by any representatives of the Commission or the Department of Justice.

“(9) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall not—

“(A) adopt any rules or take any actions that result in any unreasonable restraint of trade; or

“(B) impose any material anticompetitive burden on trading on the derivatives transaction execution facility.

“(e) USE OF BROKER-DEALERS, DEPOSITORY INSTITUTIONS, AND FARM CREDIT SYSTEM INSTITUTIONS AS INTERMEDIARIES.—

“(1) IN GENERAL.—A registered derivatives transaction execution facility may by rule allow a broker-dealer, depository institution, or institution of the Farm Credit System that meets the requirements of paragraph (2) to—

“(A) act as an intermediary in transactions executed on the facility on behalf of customers of the broker-dealer, depository institution, or institution of the Farm Credit System; and

“(B) receive funds of customers to serve as margin or security for such transactions.

“(2) REQUIREMENTS.—The requirements referred to in paragraph (1) are that—

“(A) the broker-dealer be in good standing with the Securities and Exchange Commission, or the depository institution or institution of the Farm Credit System be in good standing with Federal bank regulatory agencies (including the Farm Credit Administration), as applicable; and

“(B) if the broker-dealer, depository institution, or institution of the Farm Credit System carries or holds customer accounts or funds for transactions on the derivatives transaction execution facility for more than 1 business day, the broker-dealer, depository institution, or institution of the Farm Credit System is registered as a futures commission merchant and is a member of a registered futures association.

“(3) IMPLEMENTATION.—The Commission shall cooperate and coordinate with the Securities and Exchange Commission, the Secretary of the Treasury, and Federal banking regulatory agencies (including the Farm Credit Administration) in adopting rules and taking any other appropriate action to facilitate the implementation of this subsection.

“(f) SEGREGATION OF CUSTOMER FUNDS.—Not later than 180 days after the effective date of the Commodity Futures Modernization Act of 2000, consistent with regulations adopted by the Commission, a registered derivatives transaction execution facility may authorize a futures commission merchant to offer any customer of the futures commission merchant that is an eligible contract participant the right to not segregate the customer funds of the futures commission merchant for purposes of trading on or through the facilities of the registered derivatives transaction execution facility.

“(g) ELECTION TO TRADE EXCLUDED COMMODITIES.—

“(1) IN GENERAL.—A board of trade that is a registered derivatives transaction execution facility may trade on the facility any agreements, contracts, or transactions involving excluded commodities other than securities, except exempt securities under section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982, that are otherwise excluded or exempt from this Act under section 2(c), 2(d), or 2(h). Notwithstanding section 5a(b)(2), a board of trade on which agreements, contracts, or transactions excluded or exempt from this Act under section 2(c), 2(d), or 2(h) are traded may elect, but shall not be required, to register as a derivatives transaction execution facility with respect to such agreements, contracts, or transactions, other than any agreement, contract, or transaction in a security other than such an exempt security.

“(2) EXCLUSIVE JURISDICTION OF THE COMMISSION.—The Commission shall have exclusive jurisdiction over agreements, contracts, or transactions described in paragraph (1) to the extent that the agreements, contracts, or transactions are traded on a derivatives transaction execution facility.”.

#### SEC. 112. DERIVATIVES CLEARING ORGANIZATIONS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5a (as added by section 111) the following:

##### “SEC. 5b. DERIVATIVES CLEARING ORGANIZATIONS.

“(a) REGISTRATION REQUIREMENT.—Except as provided in subsection (b), it shall be unlawful for a derivatives clearing organization, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization described in section 1a(9).

“(b) EXCLUSION OF DERIVATIVES CLEARING ORGANIZATIONS SUBJECT TO OTHER REGULATORY AUTHORITIES.—A derivatives clearing organization shall not be required to register with the Commission, and the Commission shall have no jurisdiction with respect to the derivatives clearing organization, if the derivatives clearing organization—

“(1)(A) is registered as a clearing agency under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

“(B) is subject to the supervisory jurisdiction of a Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) or the National Credit Union Administration; or

“(C) is subject to the supervisory jurisdiction of a foreign regulatory authority that is recognized by the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Commission as overseeing a system of consolidated supervision comparable to that provided under applicable United States law; and

“(2) does not clear—

“(A) a contract of sale for future delivery other than a security future product;

“(B) an option on a contract of sale for future delivery other than a security future product; or

“(C) an option on a commodity other than a security.

“(c) VOLUNTARY REGISTRATION.—A derivatives clearing organization that is not exempt from registration under subsection (b) may register with the Commission as a derivatives clearing organization.

“(d) REGISTRATION OF DERIVATIVES CLEARING ORGANIZATIONS.—

“(1) APPLICATION.—A person desiring to register as a derivatives clearing organization shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval under paragraph (2).

“(2) CORE PRINCIPLES.—

“(A) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, an applicant shall demonstrate to the Commission that the applicant complies with the core principles specified in this paragraph.

“(B) FINANCIAL RESOURCES.—The applicant shall demonstrate that the applicant has adequate financial, operational, and managerial resources to discharge the responsibilities of a derivatives clearing organization without interruption in various market conditions.

“(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—The applicant shall establish—

“(i) appropriate admission and continuing eligibility standards (including appropriate minimum financial requirements) for members of and participants in the organization; and

“(ii) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the applicant.

“(D) RISK MANAGEMENT.—The applicant shall have the ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.

“(E) SETTLEMENT PROCEDURES.—The applicant shall have the ability to—

“(i) complete settlements on a timely basis under varying circumstances;

“(ii) maintain an adequate record of the flow of funds associated with each transaction that the applicant clears; and

“(iii) comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations.

“(F) TREATMENT OF FUNDS.—The applicant shall have standards and procedures designed to protect and ensure the safety of member and participant funds.

“(G) DEFAULT RULES AND PROCEDURES.—The applicant shall have rules and procedures designed to allow for efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the derivatives clearing organization.

“(H) RULE ENFORCEMENT.—The applicant shall—

“(i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with rules of the applicant and for resolution of disputes; and

“(ii) have the authority and ability to discipline, limit, suspend, or terminate a member's or participant's activities for violations of rules of the applicant.

“(I) SYSTEM SAFEGUARDS.—The applicant shall demonstrate that the applicant—

“(i) has established and will maintain a program of oversight and risk analysis to ensure that the automated systems of the applicant function properly and have adequate capacity and security; and



“(ii) has established and will maintain emergency procedures and a plan for disaster recovery, and will periodically test backup facilities sufficient to ensure daily processing, clearing, and settlement of transactions.

“(J) REPORTING.—The applicant shall provide to the Commission all information necessary for the Commission to conduct the oversight function of the applicant with respect to the activities of the derivatives clearing organization.

“(K) RECORDKEEPING.—The applicant shall—

“(i) maintain full records of all activities related to the business of the applicant as a derivatives clearing organization in a form and manner acceptable to the Commission for a period of at least 5 years;

“(ii) make the records readily available during at least the first 2 years of the 5-year period and provide the records to the Commission at the expense of the person required to maintain the records; and

“(iii) keep the records open to inspection by any representative of the Commission or the Department of Justice.

“(L) PUBLIC INFORMATION.—The applicant shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) available to market participants.

“(M) INFORMATION SHARING.—The applicant shall—

“(i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and

“(ii) use relevant information obtained from the agreements in carrying out the clearing organization’s risk management program.

“(N) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the derivatives clearing organization shall not—

“(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or

“(ii) impose any material anticompetitive burden on trading on the contract market.

“(3) ORDERS CONCERNING COMPETITION.—A derivatives clearing organization may request the Commission to issue an order concerning whether a rule or practice of the applicant is the least anticompetitive means of achieving the objectives, purposes, and policies of this Act.

“(e) EXISTING DERIVATIVES CLEARING ORGANIZATIONS.—A derivatives clearing organization shall be deemed to be registered under this section to the extent that—

“(1) the derivatives clearing organization clears agreements, contracts, or transactions for a board of trade that has been designated by the Commission as a contract market for such agreements, contracts, or transactions before the date of enactment of this section; and

“(2) the Commission has reviewed and approved the rules of the derivatives clearing organization before that date.

“(f) APPOINTMENT OF TRUSTEE.—

“(1) IN GENERAL.—If a proceeding under section 5e results in the suspension or revocation of the registration of a derivatives clearing organization, or if a derivatives clearing organization withdraws from registration, the Commission, on notice to the derivatives clearing organization, may apply to the appropriate United States district court where the derivatives clearing organization is located for the appointment of a trustee.

“(2) ASSUMPTION OF JURISDICTION.—If the Commission applies for appointment of a trustee under paragraph (1)—

“(A) the court may take exclusive jurisdiction over the derivatives clearing organization and the records and assets of the derivatives clearing organization, wherever located; and

“(B) if the court takes jurisdiction under subparagraph (A), the court shall appoint the Commission, or a person designated by the Commission, as trustee with power to take possession and continue to operate or terminate the operations of the derivatives clearing organization in an orderly manner for the protection of participants, subject to such terms and conditions as the court may prescribe.

“(g) LINKING OF REGULATED CLEARING FACILITIES.—

“(1) IN GENERAL.—The Commission shall facilitate the linking or coordination of derivatives clearing organizations registered under this Act with other regulated clearance facilities for the coordinated settlement of cleared transactions.

“(2) COORDINATION.—In carrying out paragraph (1), the Commission shall coordinate with the Federal banking agencies and the Securities and Exchange Commission.”.

**SEC. 113. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES.**

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5b (as added by section 112) the following:

**“SEC. 5c. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES.**

**“(a) ACCEPTABLE BUSINESS PRACTICES UNDER CORE PRINCIPLES.—**

**“(1) IN GENERAL.—**Consistent with the purposes of this Act, the Commission may issue interpretations, or approve interpretations submitted to the Commission, of sections 5(d), 5a(d), and 5b(d)(2) to describe what would constitute an acceptable business practice under such sections.

**“(2) EFFECT OF INTERPRETATION.—**An interpretation issued under paragraph (1) shall not provide the exclusive means for complying with such sections.

**“(b) DELEGATION OF FUNCTIONS UNDER CORE PRINCIPLES.—**

**“(1) IN GENERAL.—**A contract market or derivatives transaction execution facility may comply with any applicable core principle through delegation of any relevant function to a registered futures association or another registered entity.

**“(2) RESPONSIBILITY.—**A contract market or derivatives transaction execution facility that delegates a function under paragraph (1) shall remain responsible for carrying out the function.

**“(c) NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS.—**

**“(1) IN GENERAL.—**Except as provided in sections 2(a)(1)(C) and 2(a)(1)(D), and subject to paragraph (2), a registered entity may elect to list for trading any new contract or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale for future delivery of a government security (or option thereon) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract, new rule, or rule amendment complies with this Act (including regulations under this Act).

**“(2) PRIOR APPROVAL.—**

**“(A) IN GENERAL.—**A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

**“(B) PRIOR APPROVAL REQUIRED.—**Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(4) of this Act (or any option thereon) traded through its facilities if such rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

**“(C) DEADLINE.—**If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

**“(3) APPROVAL.—**The Commission shall approve any such new contract or instrument, new rule, or rule amendment unless the Commission finds that the new contract or instrument, new rule, or rule amendment would violate this Act.

**“(d) RESERVATION OF EMERGENCY AUTHORITY.—**Nothing in this section shall limit or in any way affect the emergency powers of the Commission provided in section 8a(9) of this Act.”.

**SEC. 114. EXEMPT BOARDS OF TRADE.**

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5c (as added by section 113) the following:

**“SEC. 5d. EXEMPT BOARDS OF TRADE.**

**“(a) IN GENERAL.—**Except as otherwise provided in this section, a contract of sale (or option on such a contract) of a commodity for future delivery traded on or through the facilities of an exempt board of trade shall be exempt from all provisions of this Act, other than section 2(g).

**“(b) CRITERIA FOR EXEMPTION.—**To qualify for an exemption under subsection (a), a board of trade shall limit trading on or through the facilities of the board of trade

to contracts of sale of a commodity for future delivery (or options on such contracts)—

“(1) that have—

“(A) a nearly inexhaustible deliverable supply;

“(B) a deliverable supply that is sufficiently large, and a cash market sufficiently liquid, to render any contract traded on the commodity highly unlikely to be susceptible to the threat of manipulation; or

“(C) no cash market;

“(2) that are entered into only between persons that are eligible contract participants at the time at which the persons enter into the contract; and

“(3) that are not contracts of sale (or options on the contract) for future delivery of any security, including any group or index of securities or any interest in, or interest that is based on the value of, any security.

“(c) **ANTIMANIPULATION REQUIREMENTS.**—A party to a futures contract or related option that is traded on an exempt board of trade shall be subject to sections 4b, 4c, 6(c), and 9(a)(2), and the Commission shall enforce those provisions with respect to any such trading.

“(d) **PRICE DISCOVERY.**—If the Commission finds that an exempt board of trade is a significant source of price discovery for any underlying commodity in any transaction traded on or through the facilities of the board of trade, the board of trade shall disseminate publicly on a daily basis trading volume, opening and closing price ranges, open interest, and other trading data as appropriate to the market.

“(e) **JURISDICTION.**—The Commission shall have exclusive jurisdiction over any account, agreement, or transaction involving a contract of sale of a commodity, or related option, to the extent that such account, agreement, or transaction is traded on an exempt board of trade.

“(f) **SUBSIDIARIES.**—A board of trade that is designated as a contract market or registered as a derivatives transaction execution facility may operate an exempt board of trade by establishing a separate subsidiary or other legal entity and otherwise satisfying the requirements of this section.”.

#### **SEC. 115. SUSPENSION OR REVOCATION OF DESIGNATION AS CONTRACT MARKET.**

Section 5e of the Commodity Exchange Act (7 U.S.C. 7b) (as redesignated by section 110(1)) is amended to read as follows:

##### **“SEC. 5e. SUSPENSION OR REVOCATION OF DESIGNATION AS REGISTERED ENTITY.**

“The failure of a registered entity to comply with any provision of this Act, or any regulation or order of the Commission under this Act, shall be cause for the suspension of the registered entity for a period not to exceed 180 days, or revocation of designation as a registered entity in accordance with the procedures and subject to the judicial review provided in section 6(b).”.

#### **SEC. 116. AUTHORIZATION OF APPROPRIATIONS.**

Section 12(d) of the Commodity Exchange Act (7 U.S.C. 16(d)) is amended by striking “2000” and inserting “2005”.

#### **SEC. 117. PREEMPTION.**

Section 12(e) of the Commodity Exchange Act (7 U.S.C. 16(e)) is amended by striking paragraph (2) and inserting the following:

“(2) the application of any Federal or State law to an agreement, contract, or transaction in or involving any commodity, product, right, service, or interest, except that this Act shall supersede and preempt—

“(A) any Federal or State law, other than antifraud provisions of general applicability and the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), as such Federal or State law applies to any such agreement, contract, or transaction—

“(i) that is conducted on or subject to the rules of a registered entity or exempt board of trade;

“(ii) that is conducted on or subject to the rules of any board of trade, exchange, or market located outside the United States, or any territory or possession of the United States (in accordance with any terms or conditions specified by the Commission by regulation); or

“(iii) that is subject to regulation by the Commission under section 4c or 19; and

“(B) any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than antifraud provisions of general applicability) in the case of—

“(i) an electronic trading facility under section 2(e); or

“(ii) an agreement, contract, or transaction that is excluded or exempt under section 2(c), 2(d), 2(f), or 2(h) or is covered by the terms of an exemption granted by the Commission under section 4(c) (regard-

less of whether any such agreement, contract, or transaction is otherwise subject to this Act); or”.

**SEC. 118. CONSIDERATION OF COSTS AND BENEFITS AND ANTITRUST LAWS.**

Section 15 of the Commodity Exchange Act (7 U.S.C. 19) is amended by striking “SEC. 15. The Commission” and inserting the following:

**“SEC. 15. CONSIDERATION OF COSTS AND BENEFITS AND ANTITRUST LAWS.**

**“(a) COSTS AND BENEFITS.—**

**“(1) IN GENERAL.—**Before promulgating a regulation under this Act or issuing an order (except as provided in paragraph (3)), the Commission shall consider the costs and benefits of the action of the Commission.

**“(2) CONSIDERATIONS.—**The costs and benefits of the proposed Commission action shall be evaluated in light of—

**“(A) considerations of protection of market participants and the public;**

**“(B) considerations of the efficiency, competitiveness, and financial integrity of futures markets;**

**“(C) considerations of price discovery;**

**“(D) considerations of sound risk management practices; and**

**“(E) other public interest considerations.**

**“(3) APPLICABILITY.—**This subsection does not apply to the following actions of the Commission:

**“(A) An order that initiates, is part of, or is the result of an adjudicatory or investigative process of the Commission.**

**“(B) An emergency action.**

**“(C) A finding of fact regarding compliance with a requirement of the Commission.**

**“(b) ANTITRUST LAWS.—**The Commission”.

**SEC. 119. CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.**

Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by adding at the end the following:

**“(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—**No agreement, contract, or transaction a party to which is reasonably believed by another party to which to be an eligible contract participant shall be void, voidable, or unenforceable, and no such reasonably believed eligible contract participant shall be entitled to rescind, or recover any payment made with respect to, such an agreement, contract, or transaction, under this section based solely on the failure of the agreement, contract, or transaction to comply with the terms or conditions of an exemption or exclusion from any provision of this Act or regulations of the Commission.”.

**SEC. 120. SPECIAL PROCEDURES TO ENCOURAGE AND FACILITATE BONA FIDE HEDGING BY AGRICULTURAL PRODUCERS.**

The Commodity Exchange Act is amended by inserting after section 4p the following:

**“SEC. 4q. SPECIAL PROCEDURES TO ENCOURAGE AND FACILITATE BONA FIDE HEDGING BY AGRICULTURAL PRODUCERS.**

**“(a) AUTHORITY.—**The Commission shall consider issuing rules or orders which—

**“(1) prescribe procedures under which each contract market is to provide for orderly delivery, including temporary storage costs, of any agricultural commodity enumerated in section 1a(4) which is the subject of a contract for purchase or sale for future delivery;**

**“(2) increase the ease with which domestic agricultural producers may participate in contract markets, including by addressing cost and margin requirements, so as to better enable such producers to hedge price risk associated with their production;**

**“(3) provide flexibility in the minimum quantities of such agricultural commodities that may be the subject of a contract for purchase or sale for future delivery that is traded on a contract market, to better allow domestic agricultural producers to hedge such price risk; and**

**“(4) encourage exchanges to provide information and otherwise facilitate the participation of domestic agricultural producers in contract markets.**

**“(b) REPORT.—**Within 1 year after the date of enactment of this section, the Commission shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the steps it has taken to implement this section and on the activities of contract markets pursuant to this section.”.

**SEC. 121. RULE OF CONSTRUCTION.**

Except as expressly provided in this title or an amendment made by this title, nothing in this title or an amendment made by this title supersedes, affects, or oth-

erwise limits or expands the scope and applicability of laws governing the Securities and Exchange Commission.

**SEC. 122. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) **COMMODITY EXCHANGE ACT.**—

(1) Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(A) in paragraphs (5), (6), (16), (17), (20), and (23) (as redesignated by section 101), by inserting “or derivatives transaction execution facility” after “contract market” each place it appears; and

(B) in paragraph (25) (as redesignated by section 101)—

(i) in the paragraph heading, by striking “CONTRACT MARKET” and inserting “REGISTERED ENTITY”;

(ii) by striking “contract market” each place it appears and inserting “registered entity”; and

(iii) by inserting at the end the following:

“A participant in an alternative trading system that is designated as a contract market pursuant to section 5f shall be deemed a member of such contract market for purposes of transactions in security future products through such contract market.”

(2) Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 4, 4a, 3) is amended—

(A) by striking “SEC. 2. (a)(1)(A)(i) The” and inserting the following:

**“SEC. 2. JURISDICTION OF COMMISSION; LIABILITY OF PRINCIPAL FOR ACT OF AGENT; COMMODITY FUTURES TRADING COMMISSION; TRANSACTION IN INTERSTATE COMMERCE.**

**“(a) JURISDICTION OF COMMISSION; COMMODITY FUTURES TRADING COMMISSION.—**

**“(1) JURISDICTION OF COMMISSION.—**

**“(A) IN GENERAL.—The”;**

(B) in subsection (a)(1)(A) (as amended by subparagraph (A) of this paragraph)—

(i) by striking “subparagraph (B) of this paragraph” and inserting “subparagraphs (C) and (D) of this paragraph and subsections (c), (d), (e), (f), (g), and (h) of this section”;

(ii) by striking “contract market designated pursuant to section 5 of this Act” and inserting “contract market designated or derivatives transaction execution facility registered pursuant to section 5 or 5a”;

(iii) by striking clause (ii); and

(iv) in clause (iii), by striking “(iii) The” and inserting the following:

**“(B) LIABILITY OF PRINCIPAL FOR ACT OF AGENT.—The”; and**

(C) in subsection (a)(1)(B)—

(i) by striking “(B)” and inserting “(C)”;

(ii) in clause (ii)(I), by striking “section 3 of the Securities Act of 1933 or”;

(iii) in clause (iv), by striking “(I)” and all that follows through “(II)”;

(iv) in clause (v)—

(I) by striking “section 3 of the Securities Act of 1933 or”; and

(II) by inserting “or subparagraph (D)” after “subparagraph”; and

(v) by moving clauses (i) through (v) 4 ems to the right;

(D) in subsection (a)(7), by striking “contract market” and inserting “registered entity”;

(E) in subsection (a)(8)(B)(ii)—

(i) in the first sentence, by striking “designation as a contract market” and inserting “designation or registration as a contract market or derivatives transaction execution facility”;

(ii) in the second sentence, by striking “designate a board of trade as a contract market” and inserting “designate or register a board of trade as a contract market or derivatives transaction execution facility”; and

(iii) in the fourth sentence, by striking “designating, or refusing, suspending, or revoking the designation of, a board of trade as a contract market involving transactions for future delivery referred to in this clause or in considering possible emergency action under section 8a(9) of this Act” and inserting “designating, registering, or refusing, suspending, or revoking the designation or registration of, a board of trade as a contract market or derivatives transaction execution facility involving transactions for future delivery referred to in this clause or in considering any possible action under this Act (including without limitation emergency action under section 8a(9))”, and by striking “designation, suspension, revocation, or emergency action” and inserting “designation, registration, suspension, revocation, or action”; and

- (F) in subsection (a), by moving paragraphs (2) through (9) 2 ems to the right.
- (3) Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended—
- (A) in subsection (a)—
- (i) in paragraph (1), by striking “designated by the Commission as a ‘contract market’ for” and inserting “designated or registered by the Commission as a contract market or derivatives transaction execution facility for”;
  - (ii) in paragraph (2), by striking “member of such”; and
  - (iii) in paragraph (3), by inserting “or derivatives transaction execution facility” after “contract market”; and
- (B) in subsection (c)—
- (i) in paragraph (1)—
    - (I) by striking “designated as a contract market” and inserting “designated or registered as a contract market or derivatives transaction execution facility”; and
    - (II) by striking “section 2(a)(1)(B)” and inserting “sections 2(a)(1)(C) and 2(a)(1)(D)”; and
  - (ii) in paragraph (2)(B)(ii), by inserting “or derivatives transaction execution facility” after “contract market”.
- (4) Section 4a of the Commodity Exchange Act (7 U.S.C. 6a) is amended—
- (A) in subsection (a)—
- (i) in the first sentence, by inserting “or derivatives transaction execution facilities” after “contract markets”; and
  - (ii) in the second sentence, by inserting “or derivatives transaction execution facility” after “contract market”;
- (B) in subsection (b)—
- (i) in paragraph (1), by inserting “, or derivatives transaction execution facility or facilities,” after “markets”; and
  - (ii) in paragraph (2), by inserting “or derivatives transaction execution facility” after “contract market”; and
- (C) in subsection (e)—
- (i) by striking “contract market or” each place it appears and inserting “contract market, derivatives transaction execution facility, or”;
  - (ii) by striking “licensed or designated” each place it appears and inserting “licensed, designated, or registered”; and
  - (iii) by striking “contract market, or” and inserting “contract market or derivatives transaction execution facility, or”.
- (5) Section 4b(a) of the Commodity Exchange Act (7 U.S.C. 6b(a)) is amended by striking “contract market” each place it appears and inserting “registered entity”.
- (6) Sections 4c(g), 4d, 4e, and 4f of the Commodity Exchange Act (7 U.S.C. 6c(g), 6d, 6e, 6f) are amended by inserting “or derivatives transaction execution facility” after “contract market” each place it appears.
- (7) Section 4g of the Commodity Exchange Act (7 U.S.C. 6g) is amended—
- (A) in subsection (b), by striking “clearinghouse and contract market” and inserting “registered entity”; and
- (B) in subsection (f), by striking “clearinghouses, contract markets, and exchanges” and inserting “registered entities”.
- (8) Section 4h of the Commodity Exchange Act (7 U.S.C. 6h) is amended by striking “contract market” each place it appears and inserting “registered entity”.
- (9) Section 4i of the Commodity Exchange Act (7 U.S.C. 6i) is amended in the first sentence by inserting “or derivatives transaction execution facility” after “contract market”.
- (10) Section 4j(a) of the Commodity Exchange Act (7 U.S.C. 6j(a)) is amended—
- (A) in paragraph (1), by inserting “for security future products” after “contract market”;
- (B) in paragraph (3)—
- (i) in the matter preceding subparagraph (A), by inserting “, other than a designated contract market in a security future product,” after “exempt a contract market”; and
  - (ii) in subparagraph (A), by striking “section 5a(b)” and inserting “section 5”; and
- (C) in paragraph (6)(ii), by striking “section 5b” and inserting “section 5e”.

(11) Section 4l of the Commodity Exchange Act (7 U.S.C. 6l) is amended by inserting “or derivatives transaction execution facilities” after “contract markets” each place it appears.

(12) Section 4p of the Commodity Exchange Act (7 U.S.C. 6p) is amended—

(A) in the third sentence of subsection (a), by striking “Act or contract markets” and inserting “Act, contract markets, or derivatives transaction execution facilities”; and

(B) in subsection (b), by inserting “derivatives transaction execution facility,” after “contract market.”

(13) Section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended—

(A) in subsection (a)—

(i) in the first sentence—

(I) by striking “board of trade desiring to be designated a ‘contract market’ shall make application to the Commission for such designation” and inserting “person desiring to be designated or registered as a contract market or derivatives transaction execution facility shall make application to the Commission for such designation or registration”; and

(II) by striking “above conditions” and inserting “conditions set forth in this Act”; and

(III) by striking “above requirements” and inserting “the requirements of this Act”;

(ii) in the second sentence, by striking “designation as a contract market within one year” and inserting “designation or registration as a contract market or derivatives transaction execution facility within 180 days”;

(iii) in the third sentence—

(I) by striking “board of trade” and inserting “person”; and

(II) by striking “one-year period” and inserting “180-day period”;

and

(iv) in the last sentence, by striking “designate as a ‘contract market’ any board of trade that has made application therefor, such board of trade” and inserting “designate or register as a contract market or derivatives transaction execution facility any person that has made application therefor, such person”;

(B) in subsection (b)—

(i) in the first sentence—

(I) by striking “designation of any board of trade as a ‘contract market’ upon” and inserting “designation or registration of any contract market or derivatives transaction execution facility on”;

(II) by striking “board of trade” each place it appears and inserting “contract market or derivatives transaction execution facility”; and

(III) by striking “designation as set forth in section 5 of this Act” and inserting “designation or registration as set forth in section 5, 5a, 5b, or 5f”;

(ii) in the second sentence—

(I) by striking “board of trade” the first place it appears and inserting “contract market or derivatives transaction execution facility”; and

(II) by striking “board of trade” the second and third places it appears and inserting “person”; and

(iii) in the last sentence, by striking “board of trade” each place it appears and inserting “person”;

(C) in subsection (c)—

(i) by striking “contract market” each place it appears and inserting “registered entity”;

(ii) by striking “contract markets” each place it appears and inserting “registered entities”; and

(iii) by striking “trading privileges” each place it appears and inserting “privileges”;

(D) in subsection (d), by striking “contract market” each place it appears and inserting “registered entity”; and

(E) in subsection (e), by striking “trading on all contract markets” each place it appears and inserting “the privileges of all registered entities”.

(14) Section 6a of the Commodity Exchange Act (7 U.S.C. 10a) is amended—

- (A) in the first sentence of subsection (a), by striking “designated as a ‘contract market’ shall” and inserting “designated or registered as a contract market or a derivatives transaction execution facility”; and
- (B) in subsection (b), by striking “designated as a contract market” and inserting “designated or registered as a contract market or a derivatives transaction execution facility”.
- (15) Section 6b of the Commodity Exchange Act (7 U.S.C. 13a) is amended—
  - (A) by striking “contract market” each place it appears and inserting “registered entity”;
  - (B) in the first sentence, by striking “designation as set forth in section 5 of this Act” and inserting “designation or registration as set forth in sections 5 through 5c”; and
  - (C) in the last sentence, by striking “the contract market’s ability” and inserting “the ability of the registered entity”.
- (16) Section 6c(a) of the Commodity Exchange Act (7 U.S.C. 13a–1(a)) by striking “contract market” and inserting “registered entity”.
- (17) Section 6d(1) of the Commodity Exchange Act (7 U.S.C. 13a–2(1)) is amended by inserting “derivatives transaction execution facility,” after “contract market.”
- (18) Section 7 of the Commodity Exchange Act (7 U.S.C. 11) is amended—
  - (A) in the first sentence—
    - (i) by striking “board of trade” and inserting “person”;
    - (ii) by inserting “or registered” after “designated”;
    - (iii) by inserting “or registration” after “designation” each place it appears; and
    - (iv) by striking “contract market” each place it appears and inserting “registered entity”;
  - (B) in the second sentence—
    - (i) by striking “designation of such board of trade as a contract market” and inserting “designation or registration of the registered entity”; and
    - (ii) by striking “contract markets” and inserting “registered entities”; and
  - (C) in the last sentence—
    - (i) by striking “board of trade” and inserting “person”; and
    - (ii) by striking “designated again a contract market” and inserting “designated or registered again a registered entity”.
- (19) Section 8(c) of the Commodity Exchange Act (7 U.S.C. 12(c)) is amended in the first sentence by striking “board of trade” and inserting “registered entity”.
- (20) Section 8a of the Commodity Exchange Act (7 U.S.C. 12a) is amended—
  - (A) by striking “contract market” each place it appears and inserting “registered entity”; and
  - (B) in paragraph (2)(F), by striking “trading privileges” and inserting “privileges”.
- (21) Sections 8b and 8c(e) of the Commodity Exchange Act (7 U.S.C. 12b, 12c(e)) are amended by striking “contract market” each place it appears and inserting “registered entity”.
- (22) Section 8e of the Commodity Exchange Act (7 U.S.C. 12e) is amended—
  - (A) by striking “contract market” each place it appears and inserting “registered entity”;
  - (B) in subsection (a), by striking “section 5a(b)” and inserting “sections 5 through 5c”;
  - (C) in subsection (b)—
    - (i) in paragraph (1), by striking “contract market’s trade monitoring system implemented pursuant to section 5a(b)” and inserting “the trade monitoring system of a registered entity implemented pursuant to sections 5 through 5c”;
    - (ii) by striking paragraph (3) and inserting the following:
 

“(3) REMEDIES.—On becoming final, the Commission deficiency order may require the registered entity to—

      - “(A) institute appropriate improvements in its trade monitoring system necessary to correct the deficiencies in the order;
      - “(B) satisfy stated objective performance criteria to correct the deficiencies;
      - “(C) upgrade or reconfigure existing systems for collecting or processing relevant data on trading and trader or broker activity, including, where appropriate, the commitment of additional resources.”; and
      - (iii) in paragraph (5)—



- (I) in the paragraph heading, by striking “DESIGNATION AS CONTRACT MARKET” and inserting “DESIGNATION OR REGISTRATION AS REGISTERED ENTITY”;
- (II) by inserting “or registration” after “designation”; and
- (III) by striking “board of trade” and inserting “person”;
- (D) in subsection (d)(2), by striking “section 5b” and inserting “section 5e”; and
- (E) in the paragraph heading of subsection (e)(2), by striking “CONTRACT MARKETS” and inserting “REGISTERED ENTITIES”.
- (23) Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended by striking “contract market” each place it appears and inserting “registered entity”.
- (24) Section 14 of the Commodity Exchange Act (7 U.S.C. 18) is amended—
  - (A) in subsection (a)(1)(B), by striking “contract market” and inserting “registered entity”; and
  - (B) in subsection (f), by striking “contract markets” and inserting “registered entities”.
- (25) Section 17 of the Commodity Exchange Act (7 U.S.C. 21) is amended by striking “contract market” each place it appears and inserting “registered entity”.
- (26) Section 22 of the Commodity Exchange Act (7 U.S.C. 25) is amended—
  - (A) in subsection (a)—
    - (i) in paragraph (1)—
      - (I) by striking “contract market, clearing organization of a contract market, licensed board of trade,” and inserting “registered entity or a derivatives clearing organization exempt from registration pursuant to section 5b(b)”;
      - (II) in subparagraph (C)(i), by striking “contract market” and inserting “registered entity”;
    - (ii) in paragraph (2), by striking “sections 5a(11),” and inserting “sections 5(d)(13), 5b(b)(1)(E),”;
    - (iii) in paragraph (3), by striking “contract market” and inserting “registered entity”; and
  - (B) in subsection (b)—
    - (i) in paragraph (1)—
      - (I) by striking “contract market or clearing organization of a contract market” and inserting “registered entity”;
      - (II) by striking “section 5a(8) and section 5a(9) of this Act” and inserting “sections 5 through 5c”;
      - (III) by striking “contract market, clearing organization of a contract market, or licensed board of trade” and inserting “registered entity”; and
      - (IV) by striking “contract market or licensed board of trade” and inserting “registered entity”;
    - (ii) in paragraph (3)—
      - (I) by striking “a contract market, clearing organization, licensed board of trade,” and inserting “registered entity”; and
      - (II) by striking “contract market, licensed board of trade” and inserting “registered entity”;
    - (iii) in paragraph (4), by striking “contract market, licensed board of trade, clearing organization,” and inserting “registered entity”; and
    - (iv) in paragraph (5), by striking “contract market, licensed board of trade, clearing organization,” and inserting “registered entity”.
- (b) FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.—Section 402(2) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402(2)) is amended by striking subparagraph (B) and inserting the following:
  - “(B) that is registered as a derivatives clearing organization under section 5b of the Commodity Exchange Act.”.

#### SEC. 123. PRIVACY.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5f (as added by section 222) the following:

#### “SEC. 5g. PRIVACY.

“(a) TREATMENT AS FINANCIAL INSTITUTIONS.—Notwithstanding section 509(3)(B) of the Gramm-Leach-Bliley Act, any person or entity that is subject to the jurisdiction of the Commission under this Act with respect to any financial activity shall be treated as a financial institution for purposes of title V of such Act with respect to such financial activity.

“(b) TREATMENT OF CFTC AS FEDERAL FUNCTIONAL REGULATOR.—For purposes of title V of such Act, the Commodity Futures Trading Commission shall be treated as a Federal functional regulator within the meaning of section 509(2) of such Act and shall prescribe regulations under such title within 6 months after the date of enactment of this section.”.

**SEC. 124. REPORT TO CONGRESS.**

(a) The Commodity Futures Trading Commission (in this section referred to as the “Commission”) shall undertake and complete a study of the Commodity Exchange Act (in this section referred to as “the Act”) and the Commission’s rules, regulations and orders governing the conduct of persons required to be registered under the Act, not later than 1 year after the date of the enactment of this Act. The study shall identify—

(1) the core principles and interpretations of acceptable business practices that the Commission has adopted or intends to adopt to replace the provisions of the Act and the Commission’s rules and regulations thereunder;

(2) the rules and regulations that the Commission has determined must be retained and the reasons therefor;

(3) the extent to which the Commission believes it can effect the changes identified in paragraph (1) of this subsection through its exemptive authority under section 4(c) of the Act; and

(4) the regulatory functions the Commission currently performs that can be delegated to a registered futures association (within the meaning of the Act) and the regulatory functions that the Commission has determined must be retained and the reasons therefor.

(b) In conducting the study, the Commission shall solicit the views of the public as well as Commission registrants, registered entities, and registered futures associations (all within the meaning of the Act).

(c) The Commission shall transmit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report of the results of its study, which shall include an analysis of comments received.

**SEC. 125. EFFECTIVE DATE.**

This title takes effect on the date of enactment of this Act.

**SEC. 126. INTERNATIONAL ACTIVITIES OF THE COMMODITY FUTURES TRADING COMMISSION.**

(a) FINDINGS.—The Congress finds that—

(1) derivatives markets serving United States industry are increasingly global in scope;

(2) developments in data processing and communications technologies enable users of risk management services to analyze and compare those services on a worldwide basis;

(3) financial services regulatory policy must be flexible to account for rapidly changing derivatives industry business practices;

(4) regulatory impediments to the operation of global business interests can compromise the competitiveness of United States businesses;

(5) events that disrupt financial markets and economies are often global in scope, require rapid regulatory response, and coordinated regulatory effort across international jurisdictions;

(6) through its membership in the International Organization of Securities Commissions, the Commodity Futures Trading Commission has promoted beneficial communication among market regulators and international regulatory cooperation; and

(7) the Commodity Futures Trading Commission and other United States financial regulators and self-regulatory organizations should continue to foster productive and cooperative working relationships with their counterparts in foreign jurisdictions.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that, consistent with its responsibilities under the Commodity Exchange Act, the Commodity Futures Trading Commission should, as part of its international activities, continue to coordinate with foreign regulatory authorities, to participate in international regulatory organizations and forums, and to provide technical assistance to foreign government authorities, in order to encourage—

(1) the facilitation of cross-border transactions through the removal or lessening of any unnecessary legal or practical obstacles;

(2) the development of internationally accepted regulatory standards of best practice;

(3) the enhancement of international supervisory cooperation and emergency procedures;

- (4) the strengthening of international cooperation for customer and market protection; and
- (5) improvements in the quality and timeliness of international information sharing.

## TITLE II—SECURITIES ACTS AMENDMENTS

### Subtitle A—Amendments

#### SEC. 201. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

- (1) in paragraph (10), by inserting “security future,” after “treasury stock,”;
- (2) by striking paragraph (11) and inserting the following:

“(11) The term ‘equity security’ means any stock or similar security; or any security future; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any put, call, straddle, option, or privilege on any such security; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.”;

- (3) in paragraph (13), by adding at the end the following: “For security future products, such term includes any contract, agreement, or transaction for future delivery.”;

- (4) in paragraph (14), by adding at the end the following: “For security future products, such term includes any contract, agreement, or transaction for future delivery.”; and

- (5) by adding at the end the following:

“(55)(A) The term ‘security future’ means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) as in effect on the date of enactment of the Futures Trading Act of 1982). The term ‘security future’ does not include any agreement, contract, or transaction excluded under subsection (c), (d), or (f) of section 2 of the Commodity Exchange Act as in effect on the date of enactment of the Commodity Futures Modernization Act of 2000.

“(B) The term ‘narrow-based security index’ means an index of securities on which contracts for future delivery are not permitted under section 2(a)(1)(C) of the Commodity Exchange Act, including any interest therein or based on the value thereof.

“(C) The term ‘security future product’ means a security future or any put, call, straddle, option, or privilege on any security future.

“(56)(A) The term ‘margin’, when used with respect to a security future product, means the amount, type, and form of collateral required to secure any extension or maintenance of credit, or the amount, type, and form of collateral required as a performance bond related to the purchase, sale, or carrying of a security future product, and all other uses of collateral related to the purchasing, selling, or carrying of a security future product.

“(B) The terms ‘margin level’ and ‘level of margin’, when used with respect to a security future product, mean the amount of margin required to secure any extension or maintenance of credit, or the amount of margin required as a performance bond related to the purchase, sale, or carrying of a security future product.

“(C) The terms ‘higher margin level’ and ‘higher level of margin’, when used with respect to a security future product, mean a margin level established by a national securities exchange registered pursuant to section 6(g) that is higher than the minimum amount established by the Commission pursuant to section 7(c)(2)(B).”.

#### SEC. 202. REGULATORY RELIEF FOR MARKETS TRADING SECURITY FUTURE PRODUCTS.

(a) EXPEDITED REGISTRATION AND EXEMPTION.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

“(g) NOTICE REGISTRATION OF SECURITY FUTURE PRODUCT EXCHANGES.—

“(1) REGISTRATION REQUIRED.—An exchange that lists or trades security future products may be registered as a national securities exchange solely for the purposes of trading security future products if—

“(A) the exchange is a board of trade, as that term is defined by the Commodity Exchange Act (7 U.S.C. 1a(2)), that has been designated a contract market by the Commodity Futures Trading Commission and such designation is not suspended by order by the Commodity Futures Trading Commission; and

“(B) such exchange does not serve as a market place for transactions in securities other than—

“(i) security future products; or

“(ii) futures on exempted securities or groups or indexes of securities or options thereon that have been authorized under section 2(a)(1)(C) of the Commodity Exchange Act by Commodity Futures Trading Commission order.

“(2) REGISTRATION BY NOTICE FILING.—

“(A) FORM AND CONTENT.—An exchange required to register only because such exchange lists or trades security future products may register for purposes of this section by filing with the Commission a written notice in such form, and containing the rules of the exchange and such other information and documents concerning such exchange as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

“(B) IMMEDIATE EFFECTIVENESS.—Such registration shall be effective immediately upon filing of the written notice with the Commission, except that such registration shall not be effective if such registration would be subject to suspension or revocation.

“(C) TERMINATION.—Such registration shall be terminated immediately if any of the conditions for registration set forth in this subsection are no longer satisfied.

“(3) PUBLIC AVAILABILITY.—The Commission shall make available to the public all notices it receives under this subsection.

“(4) EXEMPTION OF EXCHANGES FROM SPECIFIED PROVISIONS.—

“(A) TRANSACTION EXEMPTIONS.—An exchange that is registered under paragraph (1) of this subsection shall be exempt from, and shall not be required to enforce compliance by its members with, and its members shall not, solely with respect to those transactions effected on such exchange in security future products, be required to comply with, the following provisions of this title and the rules thereunder:

“(i) Subsections (b)(2), (b)(3), (b)(4), (b)(7), (b)(9), (c), (d), and (e) of this section.

“(ii) Subsection (a) of section 10.

“(iii) Section 11.

“(iv) Subsections (d), (f), and (k) of section 17.

“(v) Subsections (a), (f), and (h) of section 19.

“(B) RULE CHANGE EXEMPTIONS.—An exchange that is subject to the registration requirement of paragraph (1) of this subsection shall also be exempt from submitting proposed rule changes pursuant to section 19(b) of this title, except that—

“(i) such exchange shall file proposed rule changes related to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security future products, sales practices for security future products for persons who effect transactions in security future products or rules effectuating such exchange’s obligation to enforce the securities laws pursuant to section 19(b)(7);

“(ii) such exchange shall file pursuant to sections 19(b)(1) and 19(b)(2) proposed rule changes related to margin, except for changes resulting in higher margin levels; and

“(iii) such exchange shall file pursuant to section 19(b)(1) proposed rule changes that have been abrogated by the Commission pursuant to section 19(b)(7)(C).

“(5) ASSOCIATION COMPLIANCE WITH REQUIREMENTS.—No exchange that is registered under paragraph (1) of this subsection shall trade any security future product until a futures association registered under section 17 of the Commodity Exchange Act has met the requirements set forth in section 15A(k)(2) of this title.

“(6) TRADING IN SECURITY FUTURE PRODUCTS.—It shall be unlawful for any person to execute or trade a security future product until the later of—

“(A) one year after the date of enactment of the Commodity Futures Modernization Act of 2000; or

“(B) such date as the Federal income tax treatment applicable to the security future products permitted under this title are equivalent to the Federal income tax treatment of equity options traded on a national securities exchange.”.

(b) COMMISSION REVIEW OF PROPOSED RULE CHANGES.—

(1) EXPEDITED REVIEW.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by adding at the end the following:

“(7) SECURITY FUTURE PRODUCT RULE CHANGES.—

“(A) FILING REQUIRED.—A self-regulatory organization that is an exchange registered with the Commission pursuant to section 6(g) of this title or that is a national securities association registered pursuant to section 15A(k) of this title shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule change or any proposed change in, addition to, or deletion from the rules of such self-regulatory organization (hereinafter in this paragraph collectively referred to as a ‘proposed rule change’) that relates to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security future products, sales practices for security future products for persons who effect transactions in security future products or rules effectuating such self-regulatory organization’s obligation to enforce the securities laws. Such proposed rule change shall be accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments concerning such proposed rule change.

“(B) FILING WITH CFTC.—A proposed rule change filed with the Commission pursuant to subparagraph (A) shall be filed concurrently with the Commodity Futures Trading Commission. Such proposed rule change may take effect upon filing of a written certification with the Commodity Futures Trading Commission, upon a determination by the Commodity Futures Trading Commission that review of the proposed rule change is not necessary or upon approval of the proposed rule change by the Commodity Futures Trading Commission.

“(C) ABROGATION OF RULE CHANGES.—Any proposed rule change of a self-regulatory organization that has taken effect pursuant to subparagraph (B) may be enforced by such self-regulatory organization to the extent such rule is not inconsistent with the provisions of this title, the rules and regulations thereunder, and applicable Federal law. At any time within 60 days of the date of the filing of a written certification with the Commodity Futures Trading Commission, the date the Commodity Futures Trading Commission determines that review of such proposed rule change is not necessary, or the date the Commodity Futures Trading Commission approves such proposed rule change, the Commission, after consultation with the Commodity Futures Trading Commission, summarily may abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of paragraph (1), if it appears to the Commission that such proposed rule change unduly burdens competition, conflicts with the securities laws, does not promote efficiency, or is inconsistent with the public interest and the protection of investors. Commission action pursuant to the preceding sentence shall not affect the validity or force of the rule change during the period it was in effect and shall not be reviewable under section 25 nor deemed to be a final agency action for purposes of section 704 of title 5, United States Code.

“(D) REVIEW OF RESUBMITTED ABROGATED RULES.—

“(i) PROCEEDINGS.—Within 35 days of the date of publication of notice of the filing of a proposed rule change that is abrogated in accordance with subparagraph (C) and refiled in accordance with paragraph (1), or within such longer period as the Commission may designate up to 90 days after such date if the Commission finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall—

“(I) by order approve such proposed rule change; or

“(II) after consultation with the Commodity Futures Trading Commission, institute proceedings to determine whether the proposed rule change should be disapproved.

Proceedings under subclause (II) shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded within 180 days after the date of publication of notice of the filing of the proposed rule change. At the conclusion of such proceedings, the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to 60 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the self-regulatory organization consents.

“(ii) GROUNDS FOR APPROVAL.—The Commission shall approve a proposed rule change of a self-regulatory organization under this subparagraph if it finds that such proposed rule change promotes efficiency, does not unduly burden competition, does not conflict with the securities laws, and is not inconsistent with the public interest or the protection of investors. The Commission shall disapprove such a proposed rule change of a self-regulatory organization if it does not make such finding. The Commission shall not approve any proposed rule change prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.”

(2) DECIMAL PRICING PROVISIONS.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by inserting after paragraph (7), as added by paragraph (1), the following:

“(8) DECIMAL PRICING.—Not later than 9 months after the later of the dates specified in section 6(g)(5), all self-regulatory organizations listing or trading security future products shall file proposed rule changes necessary to implement decimal pricing of security future products. The Commission may not require such rules to contain equal minimum increments in such decimal pricing.”

(3) CONSULTATION PROVISIONS.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by inserting after paragraph (8), as added by paragraph (2), the following:

“(9) CONSULTATION WITH CFTC.—

“(A) CONSULTATION REQUIRED.—The Commission shall consult with and consider the views of the Commodity Futures Trading Commission prior to approving a proposed rule change filed by a national securities association registered pursuant to section 15A(a) or a national securities exchange subject to the provisions of subsection (a) that primarily concerns conduct related to transactions in security futures products, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor.

“(B) RESPONSES TO CFTC COMMENTS AND FINDINGS.—If the Commodity Futures Trading Commission comments in writing to the Commission on a proposed rule that has been published for comment, the Commission shall respond in writing to such written comment before approving the proposed rule. If the Commodity Futures Trading Commission determines, and notifies the Commission, that such rule, if implemented or as applied, would—

“(i) adversely affect the liquidity or efficiency of the market for security future products; or

“(ii) impose any burden on competition not necessary or appropriate in furtherance of the purposes of this section,

the Commission shall, prior to approving the proposed rule, find that such rule is necessary and appropriate in furtherance of the purposes of this section notwithstanding the Commodity Futures Trading Commission’s determination.

“(C) CONSIDERATIONS OF EXISTING REGULATION.—In approving rules described in subparagraph (A), the Commission shall consider the sufficiency and appropriateness of then existing laws and rules applicable to security futures products.”

(c) REVIEW OF DISCIPLINARY PROCEEDINGS.—Section 19(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(d)) is amended by adding at the end the following:

“(3) The provisions of this subsection shall apply to an exchange registered pursuant to section 6(g) of this title or a national securities association registered pursuant to section 15A(k) of this title only to the extent that such exchange or association imposes any final disciplinary sanction for—

“(A) a violation of the federal securities laws or the rules and regulations thereunder; or

“(B) a violation of a rule of such exchange or association, as to which a proposed change would be required to be filed under section 19 of this title, except

that, to the extent that the exchange or association rule violation relates to any account, agreement, or transaction, this subsection shall apply only to the extent such violation involves a security future product.”.

**SEC. 203. REGULATORY RELIEF FOR INTERMEDIARIES TRADING SECURITY FUTURE PRODUCTS.**

(a) **EXPEDITED REGISTRATION AND EXEMPTIONS.**—

(1) **AMENDMENT.**—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by adding at the end the following:

“(11) **BROKER/DEALER REGISTRATION WITH RESPECT TO TRANSACTIONS IN SECURITY FUTURE PRODUCTS.**—

“(A) **NOTICE REGISTRATION.**—

“(i) **CONTENTS OF NOTICE.**—Notwithstanding paragraphs (1) and (2), a broker or dealer required to register only because it effects transactions in security future products on an exchange registered pursuant to section 6(g) may register for purposes of this section by filing with the Commission a written notice in such form and containing such information concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. A broker or dealer may not register under this paragraph unless that broker or dealer is a member of a national securities association registered under section 15A(k).

“(ii) **IMMEDIATE EFFECTIVENESS.**—Such registration shall be effective immediately upon filing of the written notice with the Commission, except that such registration shall not be effective if the registration would be subject to suspension or revocation under paragraph (4).

“(iii) **SUSPENSION.**—Such registration shall be suspended immediately if a national securities association registered pursuant to section 15A(k) of this title suspends the membership of that broker or dealer.

“(iv) **TERMINATION.**—Such registration shall be terminated immediately if any of the above stated conditions for registration set forth in this paragraph are no longer satisfied.

“(B) **EXEMPTIONS FOR REGISTERED BROKERS AND DEALERS.**—A broker or dealer registered pursuant to the requirements of subparagraph (A) shall be exempt from the following provisions of this title and the rules thereunder with respect to transactions in security future products:

“(i) Section 8.

“(ii) Subsection (a) of section 10.

“(iii) Section 11.

“(iv) Subsections (c)(3) and (c)(5) of this section.

“(v) Section 15B.

“(vi) Section 15C.

“(vii) Subsections (d), (e), (f), (g), (h), and (i) of section 17.”.

(2) **CONFORMING AMENDMENT.**—Section 28(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e)) is amended by adding at the end the following:

“(4) The provisions of this subsection shall not apply with regard to securities that are security future products.”.

(b) **FLOOR BROKERS AND FLOOR TRADERS.**—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by inserting after paragraph (11), as added by subsection (a), the following:

“(12) **EXEMPTION FOR SECURITY FUTURE PRODUCT EXCHANGE MEMBERS.**—

“(A) **REGISTRATION EXEMPTION.**—A natural person shall be exempt from the registration requirements of this section if such person—

“(i) is a member of a designated contract market registered with the Commission as an exchange pursuant to section 6(g);

“(ii) effects transactions only in securities on the exchange of which such person is a member; and

“(iii) has no direct contact with public customers.

“(B) **OTHER EXEMPTIONS.**—A natural person exempt from registration pursuant to subparagraph (A) shall also be exempt from the following provisions of this title and the rules thereunder:

“(i) Section 8.

“(ii) Subsection (a) of section 10.

“(iii) Section 11.

“(iv) Subsections (c)(3), (c)(5), and (e) of this section.

“(v) Section 15B.

“(vi) Section 15C.

“(vii) Subsections (d), (e), (f), (g), (h), and (i) of section 17.”.

(c) LIMITED PURPOSE NATIONAL SECURITIES ASSOCIATION.—Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) is amended by adding at the end the following:

“(k) LIMITED PURPOSE NATIONAL SECURITIES ASSOCIATION.—

“(1) REGULATION OF MEMBERS WITH RESPECT TO SECURITY FUTURE PRODUCTS.—A futures association registered under section 17 of the Commodity Exchange Act shall be a registered national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security future products pursuant to section 15(b)(11).

“(2) REQUIREMENTS FOR REGISTRATION.—Such a securities association shall—

“(A) be so organized and have the capacity to carry out the purposes of the securities laws applicable to security future products and to comply, and (subject to any rule or order of the Commission pursuant to section 19(g)(2)) to enforce compliance by its members and persons associated with its members, with the provisions of the securities laws applicable to security future products, the rules and regulations thereunder, and its rules;

“(B) have rules that—

“(i) are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, including rules governing sales practices and the advertising of security future products comparable to those of other national securities associations registered pursuant to subsection (a); and

“(ii) are not designed to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the association;

“(C) have rules that provide that (subject to any rule or order of the Commission pursuant to section 19(g)(2)) its members and persons associated with its members shall be appropriately disciplined for violation of any provision of the securities laws applicable to security future products, the rules or regulations thereunder, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction; and

“(D) have rules that ensure that members and natural persons associated with members meet such standards of training, experience, and competence necessary to effect transactions in security future products and are tested for their knowledge of securities and security future products.

“(3) EXEMPTION FROM RULE CHANGE SUBMISSION.—Such a securities association shall be exempt from submitting proposed rule changes pursuant to section 19(b) of this title, except that—

“(A) the association shall file proposed rule changes related to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security future products, sales practices, advertising of security future products, or standards of training, experience, competence, or other qualifications for security future products for persons who effect transactions in security future products or rules effectuating the association’s obligation to enforce the securities laws pursuant to section 19(b)(7);

“(B) the association shall file pursuant to sections 19(b)(1) and 19(b)(2) proposed rule changes related to margin, except for changes resulting in higher margin levels; and

“(C) the association shall file pursuant to section 19(b)(1) proposed rule changes that have been abrogated by the Commission pursuant to section 19(b)(7)(C).

“(4) OTHER EXEMPTIONS.—Such a securities association shall be exempt from and shall not be required to enforce compliance by its members, and its members shall not, solely with respect to their transactions effected in security future products, be required to comply, with the following provisions of this title and the rules thereunder:

“(A) Subsections (b)(1), (b)(3), (b)(4), (b)(5), (b)(8), (b)(10), (b)(11), (b)(12), (b)(13), (c), (d), (e), (f), (g), (h), and (i) of this section.

“(B) Subsections (d), (f), and (k) of section 17.

“(C) Subsections (a), (f), and (h) of section 19.”

(d) EXEMPTION UNDER THE SECURITIES INVESTOR PROTECTION ACT OF 1970.—

(1) Section 16(14) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78lll(14)) is amended by inserting “or any security future as that term is defined in section 3(a)(55)(A) of the Securities Exchange Act of 1934,” after “certificate of deposit for a security.”



(2) Section 3(a)(2)(A) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ccc(a)(2)(A)) is amended—

(A) in clause (i), by striking “and” after the semicolon;

(B) in clause (ii), by striking the period and inserting “; and”;

(C) by adding at the end the following:

“(iii) persons who are registered as a broker or dealer pursuant to section 15(b)(11)(A) of the Securities Exchange Act of 1934.”.

(e) OTHER PROVISION.—Section 15(i)(6)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(i)(6)(A)) is amended—

(1) in clause (ii), by striking “and” after the semicolon;

(2) in clause (iii), by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(iv) is not a security future product.”.

#### SEC. 204. SPECIAL PROVISIONS FOR INTERAGENCY COOPERATION.

Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by striking subsection (b) and inserting the following:

“(b) RECORDS SUBJECT TO EXAMINATION.—

“(1) PROCEDURES FOR COOPERATION WITH OTHER AGENCIES.—All records of persons described in subsection (a) are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency for such persons as the Commission or the appropriate regulatory agency for such persons deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title if the Commission, prior to conducting any such examination of a—

“(A) registered clearing agency, registered transfer agent, or registered municipal securities dealer for which it is not the appropriate regulatory agency, gives notice to the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer, of such proposed examination and consults with the appropriate regulatory agency concerning the feasibility and desirability of coordinating such examinations conducted by the appropriate regulatory agency with a view to avoiding unnecessary regulatory duplication or undue regulatory burdens for such clearing agency, transfer agent, or municipal securities dealer; or

“(B) broker or dealer registered pursuant to section 15(b)(11), exchange registered pursuant to section 6(g), or national securities association registered pursuant to section 15A(k) gives notice to the Commodity Futures Trading Commission of such proposed examination and consults with the Commodity Futures Trading Commission concerning the feasibility and desirability of coordinating such examination with examinations conducted by the Commodity Futures Trading Commission with a view to avoiding unnecessary regulatory duplication or undue regulatory burdens for such broker or dealer or exchange.

“(2) FURNISHING DATA AND REPORTS TO CFTC.—The Commission shall notify the Commodity Futures Trading Commission of any examination conducted of any broker or dealer registered pursuant to section 15(b)(11), exchange registered pursuant to section 6(g), or national securities association registered pursuant to section 15A(k) and, upon request, furnish to the Commodity Futures Trading Commission any examination report and data supplied to the Commission in connection with such examination.

“(3) USE OF CFTC REPORTS.—The Commission shall, to the fullest extent possible, use the reports of examinations of any broker or dealer registered pursuant to section 15(b)(11) or exchange registered pursuant to section 6(g) made by the Commodity Futures Trading Commission, a national securities association registered pursuant to section 15A(k), or an exchange registered pursuant to section 6(g).

“(4) LARGE TRADER REPORTING.—The Commission and the Commodity Futures Trading Commission shall jointly prescribe rules to require large trader reporting with respect to security future products. Such rules shall specify a reporting level for each security future product, a format for reporting, and the procedures for filing such reports with the Commission and the Commodity Futures Trading Commission.

“(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to impair or limit (other than by the requirement of prior consultation) the power of the Commission under this subsection to examine any clearing agency, transfer agent, or municipal securities dealer, broker or dealer registered pursuant to section 15(b)(11), exchange registered pursuant to section 6(g), or national securities association registered pursuant to section 15A(k), or to affect

in any way the power of the Commission under any other provision of this title or otherwise to inspect, examine, or investigate any clearing agency, transfer agent, or municipal securities dealer, broker or dealer registered pursuant to section 15(b)(11), exchange registered pursuant to section 6(g), or national securities association registered pursuant to section 15A(k)."

**SEC. 205. MAINTENANCE OF MARKET INTEGRITY FOR SECURITY FUTURE PRODUCTS.**

(a) ADDITION OF SECURITY FUTURE PRODUCTS TO OPTION-SPECIFIC ENFORCEMENT PROVISIONS.—

(1) PROHIBITION AGAINST MANIPULATION.—Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)) is amended—

(A) in paragraph (1)—

(i) by inserting "(A)" after "acquires"; and

(ii) by striking "; or" and inserting ", or (B) any security future product on the security; or";

(B) in paragraph (2)—

(i) by inserting "(A)" after "interest in any"; and

(ii) by striking "; or" and inserting ", or (B) such security future product delivery; or"; and

(C) in paragraph (3)—

(i) by inserting "(A)" after "interest in any"; and

(ii) by inserting ", or (B) such security future product" after "privilege".

(2) MANIPULATION IN OPTIONS AND OTHER DERIVATIVE PRODUCTS.—Section 9(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(g)) is amended—

(A) by inserting "(1)" after "(g)";

(B) by inserting "other than a security future product" after "future delivery"; and

(C) by adding at the end following:

"(2) Notwithstanding the Commodity Exchange Act, the Commission shall have the authority to regulate the trading of any security future product to the extent provided in the securities laws."

(3) LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID AND ABET VIOLATIONS.—Section 20(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(d)) is amended by striking "or privilege" and inserting "privilege, or security future product".

(4) LIABILITY TO CONTEMPORANEOUS TRADERS FOR INSIDER TRADING.—Section 21A(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-1(a)(1)) is amended by striking "standardized options, the Commission—" and inserting "standardized options or security future products, the Commission—".

(5) ENFORCEMENT CONSULTATION.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following:

"(i) INFORMATION TO CFTC.—The Commission shall provide the Commodity Futures Trading Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any broker or dealer registered pursuant to section 15(b)(11) or any exchange registered pursuant to section 6(g)."

**SEC. 206. SPECIAL PROVISIONS FOR THE TRADING OF SECURITY FUTURE PRODUCTS.**

(a) LISTING STANDARDS AND CONDITIONS FOR TRADING.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by inserting after subsection (g), as added by section 202, the following:

"(h) TRADING IN SECURITY FUTURE PRODUCTS.—

"(1) TRADING ON EXCHANGE OR ASSOCIATION REQUIRED.—It shall be unlawful for any person to effect transactions in security future products that are not listed on a national securities exchange or a national securities association registered pursuant to section 15A(a).

"(2) LISTING STANDARDS AND CONDITIONS FOR TRADING REQUIRED.—A national securities exchange or a national securities association registered pursuant to section 15A(a) may trade only security future products that (A) conform with listing standards and conditions for trading that such exchange or association files with the Commission under section 19(b), and (B) meet the criteria specified in section 2(a)(1)(D)(i) of the Commodity Exchange Act.

"(3) REQUIREMENTS FOR LISTING STANDARDS AND CONDITIONS FOR TRADING.—Such listing standards and conditions for trading shall—

"(A) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that any security underlying the security future, including each component security of a narrow-based security index, be registered pursuant to section 12 of this title;

“(B) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that the security future product be cash settled;

“(C) be no less restrictive than comparable listing standards for options traded on a national securities exchange or a national securities association registered pursuant to section 15A(a) of this title;

“(D) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that the security future be based upon common stock and such other equity securities as the Commission and the Commodity Futures Trading Commission jointly determine appropriate;

“(E) require that the security future product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security future products, which permits the security future product to be purchased on one market and offset on any other market on which the security future product is traded;

“(F) require that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) effect transactions in the security future product;

“(G) require that the security future product be subject to the prohibition against dual trading in section 4j of the Commodity Exchange Act (7 U.S.C. 6j) and the rules and regulations thereunder or the provisions of section 11(a) of this title and the rules and regulations thereunder, except to the extent otherwise permitted under this title and the rules and regulations thereunder;

“(H) require that trading in the security future product not be readily susceptible to manipulation of the price of such security future product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities;

“(I) require that procedures be in place for coordinated surveillance among the market on which the security future product is traded, any market on which any security underlying the security future product is traded, and other markets on which any related security is traded to detect manipulation and insider trading;

“(J) require that the market on which the security future product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (I);

“(K) require that the market on which the security future product is traded has in place procedures to coordinate trading halts between such market and any market on which any security underlying the security future product is traded and other markets on which any related security is traded; and

“(L) require that the margin requirements for a security future product be consistent with the margin requirements for comparable option contracts traded on an exchange registered pursuant to section 6(a) of this title and that initial and maintenance margin levels for a security future product not be lower than the levels of margin required for comparable option contracts traded on an exchange registered pursuant to section 6(a) of this title, except that nothing in this subparagraph shall be construed to prevent a national securities exchange or national securities association from requiring higher margin levels for a security future product when it deems such action to be necessary or appropriate.

“(4) AUTHORITY TO MODIFY CERTAIN LISTING STANDARD REQUIREMENTS.—The Commission and the Commodity Futures Trading Commission, by rule, regulation, or order, may jointly modify the listing standard requirements specified in subparagraph (A), (B), or (D) of paragraph (3) to the extent such modification fosters the development of fair and orderly markets in security future products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

“(5) REQUIREMENTS FOR OTHER PERSONS TRADING SECURITY FUTURE PRODUCTS.—It shall be unlawful for any person (other than a national securities exchange or a national securities association registered pursuant to section 15A(a)) to constitute, maintain, or provide a marketplace or facilities for bringing together purchasers and sellers of security future products or to otherwise perform with respect to security future products the functions commonly performed by a stock exchange as that term is generally understood, unless a national securities association registered pursuant to section 15A(a)—

“(A) has in place procedures for coordinated surveillance among such person, the market trading the securities underlying the security future prod-

ucts, and other markets trading related securities to detect manipulation and insider trading;

“(B) has rules to require audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (A); and

“(C) has rules to require such person to coordinate trading halts with markets trading the securities underlying the security future products and other markets trading related securities.

“(6) DEFERRAL OF OPTIONS ON SECURITY FUTURES TRADING.—No person shall offer to enter into, enter into, or confirm the execution of any put, call, straddle, option, or privilege on a security future, except that, after 3 years after the date of enactment of this subsection, the Commission and the Commodity Futures Trading Commission may by order jointly determine to permit trading of puts, calls, straddles, options, or privileges on any security future authorized to be traded under the provisions of this Act and the Commodity Exchange Act. Before any such determination, the Commission and the Commodity Futures Trading Commission shall conduct a study of the effect of the trading of security futures on the markets for futures contracts, securities, and options and the adequacy of protections for investors and other market participants.”

(b) MARGIN.—Section 7 of the Securities Exchange Act of 1934 (15 U.S.C. 78g) is amended—

(1) in subsection (a), by inserting “or a security future product” after “exempted security”;

(2) in subsection (c)(1)(A), by inserting “except as provided in paragraph (2),” after “security”;

(3) by redesignating paragraph (2) of subsection (c) as paragraph (3) of such subsection; and

(4) by inserting after paragraph (1) of such subsection the following:

“(2) MARGIN REGULATIONS.—

“(A) COMPLIANCE WITH MARGIN RULES REQUIRED.—It shall be unlawful for any broker, dealer, or member of a national securities exchange to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on, any security future product unless such activities comply with the rules and regulations which the Commission, after consultation with the Commodity Futures Trading Commission shall prescribe pursuant to subparagraph (B).

“(B) CRITERIA FOR ISSUANCE OF RULES.—The Commission shall issue such regulations to establish margin requirements, including the establishment of levels of margin (initial and maintenance) and use of collateral for security future products under such terms, and at such levels, as the Commission deems appropriate—

“(i) to preserve the financial integrity of markets trading security future products;

“(ii) to prevent systemic risk;

“(iii) to make consistent the margin levels (initial and maintenance) and other margin requirements between security future products and comparable options contracts traded on a national securities exchange; and

“(iv) to ensure that the margin requirements (other than levels of margin), including the type, form, and use of collateral for security future products, are and remain consistent with the requirements established by the Federal Reserve Board, pursuant to subparagraphs (A) and (B) of paragraph (1).”

(c) INCORPORATION OF SECURITY FUTURE PRODUCTS INTO THE NATIONAL MARKET SYSTEM.—Section 11A of the Securities Exchange Act of 1934 (15 U.S.C. 78k–1) is amended by adding at the end the following:

“(e) NATIONAL MARKETS SYSTEM FOR SECURITY FUTURE PRODUCTS.—

“(1) CONSULTATION AND COOPERATION REQUIRED.—With respect to security future products, the Commission and the Commodity Futures Trading Commission shall consult and cooperate so that, to the maximum extent practicable, their respective regulatory responsibilities may be fulfilled and the rules and regulations applicable to security future products may foster a national market system for security future products if the Commission and the Commodity Futures Trading Commission jointly determine that such a system would be consistent with the congressional findings in subsection (a)(1). In accordance with this objective, the Commission shall, at least 15 days prior to the issuance for public comment of any proposed rule or regulation under this section concerning security future products, consult and request the views of the Commodity Futures Trading Commission.

“(2) APPLICATION OF RULES BY ORDER OF CFTC.—No rule adopted pursuant to this section shall be applied to any person with respect to the trading of security future products on an exchange that is registered under section 6(g) unless the Commodity Futures Trading Commission has issued an order directing that such rule is applicable to such persons.”.

(d) INCORPORATION OF SECURITY FUTURE PRODUCTS INTO THE NATIONAL SYSTEM FOR CLEARANCE AND SETTLEMENT.—Section 17A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(b)) is amended by adding at the end the following:

“(7) A clearing agency that is regulated directly or indirectly by the Commodity Futures Trading Commission through its association with a designated contract market for security future products, and that performs the functions of a clearing agency only with respect to security future products and transactions in securities effected pursuant to the rules of the designated contract market with which such agency is associated, is exempted from the provisions of this section and the rules and regulations thereunder, except that any clearing agency that performs the functions of a clearing agency with respect to security future products must coordinate with and develop fair and reasonable links with any and all other clearing agencies that perform the functions of a clearing agency with respect to security future products, in order to permit security future products to be purchased on a national securities exchange or national securities association registered pursuant to section 15A(a) and offset on another national securities exchange or national securities association registered pursuant to section 15A(a).”.

(e) MARKET EMERGENCY POWERS AND CIRCUIT BREAKERS.—Section 12(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(k)) is amended—

(1) in paragraph (1), by adding at the end the following: “If the actions described in subparagraph (A) or (B) involve a security future product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.”; and

(2) in paragraph (2)(B), by inserting after the first sentence the following: “If the actions described in subparagraph (A) involve a security future product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.”.

(f) OBLIGATION TO PUT IN PLACE PROCEDURES AND ADOPT RULES.—Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) is amended by inserting after subsection (k), as added by section 203, the following new subsection:

“(l) PROCEDURES AND RULES FOR SECURITY FUTURE PRODUCTS.—A national securities association registered pursuant to subsection (a) shall, not later than one year after the date of enactment of the Commodity Futures Modernization Act of 2000, implement the procedures specified in section 6(h)(5)(A) of this title and adopt the rules specified in subparagraphs (B) and (C) of section 6(h)(5) of this title.”.

#### SEC. 207. CLEARANCE AND SETTLEMENT.

Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by inserting after subparagraph (D) the following: “(E) The clearance and settlement of transactions in over-the-counter derivatives through clearing agencies registered with the Commission will reduce systemic risk and provide stability to financial markets during times of market disorder.”; and

(B) in paragraph (2)(A)(ii), by striking “and commodity options” and inserting “commodity options, and over-the-counter derivatives”; and

(2) in subsection (b)—

(A) in paragraph (3)(A), by inserting “and derivative agreements, contracts, and transactions” after “prompt and accurate clearance and settlement of securities transactions”; and

(B) in paragraph (3)(F), by inserting “and, to the extent applicable, derivative agreements, contracts, and transactions” after “designed to promote the prompt and accurate clearance and settlement of securities transactions”; and

(C) by inserting after paragraph (7), as added by section 206(d), the following:

“(8) A registered clearing agency shall be permitted to provide facilities for the clearance and settlement of any derivative agreements, contracts, or transactions that are excluded from the Commodity Exchange Act, subject to the requirements of this section and to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.”.

**SEC. 208. AMENDMENTS RELATING TO REGISTRATION AND DISCLOSURE ISSUES UNDER THE SECURITIES ACT OF 1933 AND THE SECURITIES EXCHANGE ACT OF 1934.**

(a) AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) TREATMENT OF SECURITY FUTURE PRODUCTS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(A) in paragraph (1), by inserting “security future,” after “treasury stock,”;

(B) in paragraph (3), by adding at the end the following: “Any offer or sale of a security future product by or on behalf of the issuer of the securities underlying the security future product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities.”; and

(C) by adding at the end the following:

“(16) The terms ‘security future’, ‘narrow-based security index’, and ‘security future product’ have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.”.

(2) EXEMPTION FROM REGISTRATION.—Section 3(a) of the Securities Act of 1933 (15 U.S.C. 77c(a)) is amended by adding at the end the following:

“(14) Any security future product that is—

“(A) cleared by a clearing agency registered under section 17A of the Securities Exchange Act of 1934 or exempt from registration under subsection (b)(7) of such section 17A; and

“(B) listed on a national securities exchange or a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.”.

(3) CONFORMING AMENDMENT.—Section 12(a)(2) of the Securities Act of 1933 (15 U.S.C. 77l(a)(2)) is amended by striking “paragraph (2)” and inserting “paragraphs (2) and (14)”.

(b) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—

(1) EXEMPTION FROM REGISTRATION.—Section 12(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(a)) is amended by adding at the end the following: “The provisions of this subsection shall not apply in respect of a security future product listed on a national securities exchange.”.

(2) EXEMPTIONS FROM REPORTING REQUIREMENT.—Section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) is amended by adding at the end the following: “For purposes of this subsection, a security future product shall not be considered a class of equity security of the issuer of the securities underlying the security future product.”.

(3) TRANSACTIONS BY CORPORATE INSIDERS.—Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) is amended by adding at the end the following:

“(f) TREATMENT OF TRANSACTIONS IN SECURITY FUTURE PRODUCTS.—The provisions of this section shall apply to ownership of and transactions in security future products as if they were ownership of and transactions in the underlying equity security. The Commission may adopt such rules and regulations as it deems necessary or appropriate in the public interest to carry out the purposes of this section.”.

**SEC. 209. AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940 AND THE INVESTMENT ADVISERS ACT OF 1940.**

(a) DEFINITIONS UNDER THE INVESTMENT COMPANY ACT OF 1940 AND THE INVESTMENT ADVISERS ACT OF 1940.—

(1) Section 2(a)(36) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(36)) is amended by inserting “security future,” after “treasury stock,”.

(2) Section 202(a)(18) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(18)) is amended by inserting “security future,” after “treasury stock,”.

(3) Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)) is amended by adding at the end the following:

“(52) The terms ‘security future’ and ‘narrow-based security index’ have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.”.

(4) Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at the end the following:

“(27) The terms ‘security future’ and ‘narrow-based security index’ have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.”.

(b) OTHER PROVISION.—Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)) is amended—

(1) by striking “or” at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting “; or”;

(3) by adding at the end the following:

“(6) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor whose business does not consist primarily of acting as an investment adviser, as defined in section 202(a)(11) of this title, and that does not act as an investment adviser to (A) an investment company registered under title I of this Act, or (B) a company which has elected to be a business development company pursuant to section 54 of title I of this Act and has not withdrawn its election.”.

**SEC. 210. PREEMPTION OF STATE GAMING AND BUCKET SHOP LAWS.**

The last sentence of section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended—

- (1) by inserting “subject to this title” after “privilege, or other security”; and
- (2) by striking “any such instrument, if such instrument is traded pursuant to rules and regulations of a self-regulatory organization that are filed with the Commission pursuant to section 19(b) of this Act” and inserting “any such security”.

## Subtitle B—Conforming Amendments to the Commodity Exchange Act

**SEC. 221. JURISDICTION OF SECURITIES AND EXCHANGE COMMISSION; OTHER PROVISIONS.**

(a) **JURISDICTION OF SECURITIES AND EXCHANGE COMMISSION.**—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2, 2a, 4) is amended by adding at the end the following:

“(D)(i) Notwithstanding any other provision of this Act, the Securities and Exchange Commission shall have jurisdiction and authority over security futures as defined in section 3(a)(55) of the Securities Exchange Act of 1934, section 2(a)(16) of the Securities Act of 1933, section 2(a)(52) of the Investment Company Act of 1940, and section 202(a)(27) of the Investment Advisers Act of 1940, options on security futures, and persons effecting transactions in security futures and options thereon, and this Act shall apply to and the Commission shall have jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an ‘option’, ‘privilege’, ‘indemnity’, ‘bid’, ‘offer’, ‘put’, ‘call’, ‘advance guaranty’, or ‘decline guaranty’) and transactions involving, and may designate a board of trade as a contract market in, a security future product as defined in section 1a(33) of this Act: *Provided, however,* That, except as provided in clause (v) of this subparagraph, no board of trade shall be designated as a contract market with respect to any such contracts of sale for future delivery unless the board of trade making such application demonstrates and the Commission expressly finds that the specific contract with respect to which the application has been made, or the board of trade, meets the following criteria:

“(I) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (vi) of this subparagraph, any security underlying the security future, including each component security of a contract of sale for future delivery on a narrow-based security index, is registered pursuant to section 12 of the Securities Exchange Act of 1934.

“(II) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (vi) of this subparagraph, the security future product is cash settled.

“(III) The security future product is not traded on an exempt board of trade or a designated transaction execution facility.

“(IV) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (vi) of this subparagraph, the security future is based upon common stock and such other equity securities as the Commission and the Securities and Exchange Commission jointly determine appropriate.

“(V) The security future product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security future products, which permits the security future product to be purchased on a designated contract market, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934, or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 and offset on any other designated contract market, national secu-

rities exchange registered under section 6(a) of the Securities Exchange Act of 1934, or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 on which the security future product is traded.

“(VI) Only futures commission merchants, introducing brokers, commodity trading advisers, commodity pool operators or associated persons subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 solicit, accept any order for, or otherwise deal in any transaction in or in connection with a security future product.

“(VII) The security future product is subject to a prohibition against dual trading in section 4j of this Act and the rules and regulations thereunder or the provisions of section 11(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, except to the extent otherwise permitted under the Securities Exchange Act of 1934 and the rules and regulations thereunder.

“(VIII) Trading in the security future product is not readily susceptible to manipulation of the price of such security future product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities.

“(IX) The board of trade on which the security future product is traded has procedures in place for coordinated surveillance among such board of trade, any market on which any security underlying the security future product is traded, and other markets on which any related security is traded to detect manipulation and insider trading, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has in place such procedures.

“(X) The board of trade on which the security future product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subclause (IX), except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has rules to require such audit trails.

“(XI) The board of trade on which the security future product is traded has in place procedures to coordinate trading halts between such board of trade and any market on which any security underlying the security future product is traded and other markets on which any related security is traded, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has rules to require such coordinated trading halts.

“(XII) The margin requirements for a security future product are consistent with the margin requirements for comparable option contracts traded on an exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 and initial and maintenance margin levels for a security future product are not lower than the levels of margin required for comparable option contracts traded on an exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934, except that nothing in this subclause shall be construed to prevent a board of trade from requiring higher margin levels for a security future product when it deems such action to be necessary or appropriate.

“(ii) It shall be unlawful for any person to offer, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a security future product unless—

“(I) such transaction is conducted on or subject to the rules of a board of trade which has been designated by the Commission as a contract market in such security future product;

“(II) such security future product is executed or consummated by, through, or with a member of such contract market; and

“(III) such security future product is evidenced by a record in writing which shows the date, the parties to such security future product and their addresses, the property covered and its price: *Provided*, That each



contract market member shall keep such record for a period of 3 years from the date thereof, or for a longer period if the Commission so directs, which record shall at all times be open to the inspection of any representative of the Commission, the Securities and Exchange Commission, or the Department of Justice.

“(iii)(I) Except as provided in subclause (II) but notwithstanding any other provision of this Act, no person shall offer to enter into, enter into, or confirm the execution of any option on a security future.

“(II) After 3 years after the date of enactment of the Commodity Futures Modernization Act of 2000, the Commission and the Securities and Exchange Commission may by order jointly determine to permit trading of options on any security future authorized to be traded under the provisions of this Act and the Securities Exchange Act of 1934. Before any such determination, the Commission and the Securities and Exchange Commission shall conduct a study of the effect of the trading of security futures on the markets for futures contracts, securities, and options and the adequacy of protections for investors and other market participants.

“(iv)(I) All records of a futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), a floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), an associated person exempt from registration pursuant to section 4k(6), or a board of trade designated as a contract market in a security future product pursuant to section 5f shall be subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title: *Provided*, That the Commission, prior to conducting any such examination, gives notice to the Securities and Exchange Commission of such proposed examination and consults with the Securities and Exchange Commission concerning the feasibility and desirability of coordinating such examination with examinations conducted by the Securities and Exchange Commission with a view to avoiding unnecessary regulatory duplication or undue regulatory burdens for such registrant or board of trade.

“(II) The Commission shall notify the Securities and Exchange Commission of any examination conducted of any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to section 4k(6), or board of trade designated as a contract market in a security future product pursuant to section 5f, and, upon request, furnish to the Securities and Exchange Commission any examination report and data supplied to the Commission in connection with such examination.

“(III) The Commission shall, to the fullest extent possible, use the reports of examinations of any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to section 4k(6), or board of trade designated as a contract market in a security future product pursuant to section 5f, made by the Securities and Exchange Commission, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3), or a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)).

“(IV) Nothing in this subsection shall be construed to impair or limit (other than by the requirement of prior consultation) the power of the Commission under this subsection to examine any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to section 4k(6), or board of trade designated as a contract market in a security future product pursuant to section 5f, or to affect in any way the power of the Commission under any other provision of this Act.

“(v) A board of trade designated as a contract market pursuant to section 5f shall be designated as a contract market with respect to a security future product by providing to the Commission a written certification that the specific contract with respect to which the application has been made, or the board of trade, meets the criteria specified in subclauses (I) through (XII) of clause (i).

“(vi) The Commission and the Securities and Exchange Commission, by rule, regulation, or order, may jointly modify the criteria specified in subclause (I), (II), or (IV) of clause (i) of this subparagraph to the extent such modification fosters the development of fair and orderly markets in security future products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.”.

(b) MARGIN ON SECURITY FUTURES.—Section 2(a)(1)(C)(vi) of the Commodity Exchange Act (7 U.S.C. 2a(vi)) (as redesignated by section 122) is amended—

(1) by redesignating subclause (V) as subclause (VI); and

(2) by striking “(vi)(I)” and all that follows through subclause (IV) and inserting the following:

“(vi)(I) Notwithstanding any other provision of this Act, any contract market in a stock index futures contract (or option thereon), other than a security future product, shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin (initial and maintenance) for such stock index futures contract (or option thereon), other than security future products.

“(II) The Board may at any time request any contract market to set the margin for any stock index futures contract (or option thereon), other than for any security future product, at such levels as the Board in its judgment determines are appropriate to preserve the financial integrity of the contract market or its clearing system or to prevent systemic risk. If the contract market fails to do so within the time specified by the Board in its request, the Board may direct the contract market to alter or supplement the rules of the contract market as specified in the request.

“(III) Subject to such conditions as the Board may determine, the Board may delegate any or all of its authority, relating to margin for any stock index futures contract (or option thereon), other than security future products, under this clause to the Commission.

“(IV) MARGIN REGULATIONS.—It shall be unlawful for any futures commission merchant to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on any security future product unless such activities comply with the rules and regulations which the Securities and Exchange Commission, after consultation with the Commission, shall prescribe pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934.

“(V) Nothing in this clause shall supersede or limit the authority granted to the Commission in section 8a(9) to direct a contract market, on finding an emergency to exist, to raise temporary margin levels on any futures contract, or option on the contract covered by this clause, or on any security future product.”.

(c) EXEMPTION FROM REGISTRATION FOR INVESTMENT ADVISERS.—Section 4m of the Commodity Exchange Act (7 U.S.C. 6m) is amended by adding at the end the following:

“(3) The provisions of subsection (1) of this section shall not apply to any commodity trading advisor that is registered with the Securities and Exchange Commission as an investment adviser whose business does not consist primarily of acting as a commodity trading advisor, as defined in section 1a of this Act, and that does not act as a commodity trading advisor to any investment trust, syndicate, or similar form of enterprise that is engaged primarily in trading in any commodity for future delivery on or subject to the rules of any contract market.”.

(d) EXEMPTION FROM INVESTIGATIONS OF MARKETS IN UNDERLYING SECURITIES.—Section 16 of the Commodity Exchange Act (7 U.S.C. 20) is amended by adding at the end the following:

“(e) The provisions of this section shall not apply to investigations involving any security underlying a security future product.”.

**SEC. 222. APPLICATION OF THE COMMODITY EXCHANGE ACT TO NATIONAL SECURITIES EXCHANGES AND NATIONAL SECURITIES ASSOCIATIONS THAT TRADE SECURITY FUTURES.**

(a) NOTICE DESIGNATION OF NATIONAL SECURITIES EXCHANGES AND NATIONAL SECURITIES ASSOCIATIONS.—The Commodity Exchange Act is amended by inserting after section 5e (7 U.S.C. 7b), as amended by section 115, the following:

**“SEC. 5f. DESIGNATION OF SECURITIES EXCHANGES AND ASSOCIATIONS AS CONTRACT MARKETS.**

“(a) Any board of trade that is registered with the Securities and Exchange Commission as a national securities exchange, is a national securities association reg-

istered pursuant to section 15A(a) of the Securities Exchange Act of 1934, or is an alternative trading system shall be a designated contract market in security future products if—

“(1) such national securities exchange, national securities association, or alternative trading system lists or trades no other contracts of sale for future delivery, except for security future products;

“(2) such national securities exchange, national securities association, or alternative trading system files written notice with the Commission in such form as the Commission, by rule, may prescribe containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of customers; and

“(3) the registration of such national securities exchange, association, or alternative trading system is not suspended pursuant to an order by the Securities and Exchange Commission.

Such designation shall be effective immediately upon filing of the written notice with the Commission.

“(b)(1) A national securities exchange, national securities association, or alternative trading system that is designated as a contract market pursuant to section 5f of this Act shall be exempt from the following provisions of this Act and the rules thereunder:

“(A) Subsections (c), (e), and (g) of section 4c.

“(B) Subsections (a) and (d) of section 4j.

“(C) Section 5.

“(D) Section 5c.

“(E) Section 6a.

“(F) Section 8(d).

“(G) Section 8e.

“(H) Section 9(f).

“(I) Section 16.

“(J) Section 22(b).

“(2)(A) Except as provided in subparagraph (B), but notwithstanding any other provision of this Act, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any designated contract market in security futures subject to the designation requirement of this section from any provision of this Act or of any rule or regulation thereunder, to the extent such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.

“(B) The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section is granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.”

(b) NOTICE REGISTRATION OF CERTAIN SECURITIES BROKER-DEALERS; EXEMPTION FROM REGISTRATION FOR CERTAIN SECURITIES BROKER-DEALERS.—Section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)) is amended—

(1) by inserting “(1)” after “(a)”; and

(2) by adding at the end the following:

“(2) Notwithstanding paragraph (1), and except as provided in paragraph (3), any broker or dealer that is registered with the Securities and Exchange Commission shall be registered as a futures commission merchant or introducing broker, as applicable, if—

“(A) such broker or dealer limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market to security future products;

“(B) such broker or dealer files written notice with the Commission in such form as the Commission, by rule, may prescribe containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors;

“(C) the registration of such broker or dealer is not suspended pursuant to an order of the Securities and Exchange Commission; and

“(D) such broker or dealer is a member of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934. Such registration shall be effective immediately upon filing of the written notice with the Commission.

“(3) A floor broker or floor trader shall be exempt from the registration requirements of section 4e and paragraph (1) of this subsection if—

“(A) such floor broker or floor trader is a broker or dealer registered with the Securities and Exchange Commission;

“(B) such floor broker or floor trader limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market to security future products; and

“(C) the registration of such floor broker or floor trader is not suspended pursuant to an order of the Securities and Exchange Commission.”.

(c) EXEMPTION FOR SECURITIES BROKER-DEALERS.—Section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)) is amended by inserting after paragraph (3), as added by subsection (b), the following:

“(4)(A) A broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2), or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3), shall be exempt from the following provisions of this Act and the rules thereunder:

“(i) Subsections (b), (d), (e), and (g) of section 4c.

“(ii) Sections 4d, 4e, and 4h.

“(iii) Subsections (b) and (c) of this section.

“(iv) Subsections (b) and (c) of section 4j.

“(v) Section 4k(1).

“(vi) Section 4p.

“(vii) Section 6d.

“(viii) Subsections (d) and (g) of section 8.

“(ix) Section 16.

“(x) Section 22(a).

“(B)(i) Except as provided in clause (ii), but notwithstanding any other provision of this Act, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any broker or dealer subject to the registration requirement of paragraph (2) of this subsection, or exempt from registration pursuant to paragraph (3) of this subsection, from any provision of this Act or of any rule or regulation thereunder, to the extent such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.

“(ii) The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section shall be granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

“(C)(i) A broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2) or an associated person thereof, or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3), shall not be required to become a member of any futures association registered under section 17 of this Act.

“(ii) No futures association registered under section 17 of this Act shall limit its members from carrying an account, accepting an order, or transacting business with a broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2) or an associated person thereof, or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3).”.

(d) EXEMPTIONS FOR ASSOCIATED PERSONS OF SECURITIES BROKER-DEALERS.—Section 4k of the Commodity Exchange Act (7 U.S.C. 6k) is amended by adding at the end the following:

“(6) Any associated person of a broker or dealer that is registered with the Securities and Exchange Commission, and who limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market to security future products, shall be exempt from the following provisions of this Act and the rules thereunder:

“(A) Subsections (b), (d), (e), and (g) of section 4c.

“(B) Sections 4d, 4e, and 4h.

“(C) Subsections (b) and (c) of section 4f.

“(D) Subsections (b) and (c) of section 4j.

“(E) Paragraph (1) of this section.

“(F) Section 4p.

“(G) Section 6d.

“(H) Subsections (d) and (g) of section 8.

“(I) Section 16.

“(J) Section 22(a).”.

#### SEC. 223. NOTIFICATION OF INVESTIGATIONS AND ENFORCEMENT ACTIONS.

(a) Section 8(a) of the Commodity Exchange Act (7 U.S.C. 12(a)) is amended by adding at the end the following:

“(3) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by

the Commission against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to section 4k(6), or any board of trade designated as a contract market pursuant to section 5f.”.

(b) Section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended by adding at the end the following:

“(g) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission pursuant to subsections (c) and (d) of this section against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to section 4k(6), or any board of trade designated as a contract market pursuant to section 5f.”.

(c) Section 6c of the Commodity Exchange Act (7 U.S.C. 13a–1) is amended by adding at the end the following:

“(h) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to section 4k(6), or any board of trade designated as a contract market pursuant to section 5f.”.

## Subtitle C—Effective Date

### SEC. 231. EFFECTIVE DATE.

This title and the amendments made by this title take effect on the date of enactment of this Act.

### PURPOSE AND SUMMARY

The purpose of this legislation is threefold: to create legal certainty for over-the-counter derivative transactions under the Commodity Exchange Act; to repeal the ban on single stock futures; and to provide regulatory relief for the futures exchanges. The legislation seeks to further the viability of the over-the-counter derivatives market by creating legal certainty for certain derivative transactions. Over-the-counter financial derivatives contracts between eligible contract participants are excluded from the Commodity Exchange Act (CEA) under this legislation. The Commodity Futures Trading Commission (CFTC) retains anti-fraud and anti-manipulation authority over non-financial exempted commodities. The CFTC retains full jurisdiction over contracts on agricultural commodities.

This legislation also seeks to ensure that the market is the final arbiter of a product’s economic worth by repealing the ban on single stock futures and narrow based stock index futures and developing a joint regulatory framework for these products administered by both the Securities and Exchange Commission (SEC) and the CFTC. The regulatory framework promotes competition both within and across markets while preserving investor protections.

The legislation also promotes competition between the contract markets and the over-the-counter markets by providing greater flexibility for trading on contract markets.

### BACKGROUND AND NEED FOR LEGISLATION

*Legal Certainty for Over-the-Counter Derivatives.* Derivative instruments are important financial management tools that, in many respects, reflect the unique strength and innovation of American

capital markets. U.S. markets and market professionals have been global leaders in derivatives technology and development. Derivatives, such as options, have traded on U.S. securities exchanges for decades.

Of particular importance are U.S. OTC derivatives markets. America's institutions, and institutional investors use derivative instruments to manage risks associated with their business activities or their financial assets. Because of the range of benefits these products offer, the OTC derivatives market has grown significantly during the past two decades. The growth in activity involving this market has come, in part, as a result of the careful approach to regulation taken by the Congress and by U.S. financial regulators. That approach has focused on promoting legal certainty for OTC derivative transactions and encouraging the development of sound industry practices.

Certain, but not all, derivative transactions in the U.S. are regulated under various statutes. Among these is the CEA, a statute that predates the establishment of significant markets for financial derivatives in the United States. The CEA evolved from the Grain Futures Act of 1922, which was designed to protect farmers from speculative excesses and price manipulation on agricultural products by enabling the Government to deal with exchanges themselves, rather than with individual traders. In order to conduct futures trading lawfully, the grain exchanges were required to be federally licensed or "designated" as "contract markets." A condition of such designation was that the exchanges had to take responsibility for the prevention of price manipulation by their members. If they failed to do so, the only recourse was suspension or revocation of their designations. The Act was administered by the Agriculture Department.

Under 1936 amendments, the legislation was renamed the Commodity Exchange Act and the regulatory coverage was extended to cotton and other specified commodities as well as grains. Broad additional authority was granted over traders generally as well as exchange members, and over the previously uncovered field of commodity brokerage.

The Commodity Futures Trading Commission Act of 1974 constituted a significant and substantial revision of the CEA. In 1974, Congress extended the coverage of the CEA to include not only previously unregulated commodities, but also all other goods and articles, and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt. Congress also created the CFTC as an independent regulatory agency to administer the CEA, and granted the CFTC exclusive jurisdiction over transactions involving futures contracts and certain other commodity-related activities.

OTC derivatives do not fall within the regulatory scope of the CEA but do, however, have a quality similar to a futures contract: a promise for delivery or payment in the future. This similarity to futures contracts has caused legal uncertainty under the CEA for OTC derivative transactions. If a court were to determine an OTC derivative was a future, the contract would be void because futures traded off exchange are illegal and unenforceable. By contrast, the securities laws do not have a similar prohibition of off-exchange trading.

While the Congress and the CFTC have both acted to create legal certainty through the creation of a Swaps and Hybrids Exemption (Swaps Exemption), a certain amount of uncertainty under the CEA remains. Because the Swaps Exemption is administered by the CFTC, it is subject to changes in the regulatory perspective of the agency.

The issuance by the CFTC of a concept release suggesting a new regulatory framework for swaps, enhanced the uncertainty surrounding OTC derivatives transactions. The concept release drew objection from the Secretary of the Treasury, the Chairman of the Federal Reserve Board and the Chairman of the SEC, and led Congress to call for a moratorium on CFTC rulemaking in this area.

In addition, the CFTC cannot exempt products subject to the Shad-Johnson Jurisdictional Accord, causing legal uncertainty for equity swaps, as further discussed below.

The over-the-counter derivatives market accounts for trillions of dollars (notional value) in transactions each year, and provides useful tools for investment banks, commercial banks, companies and individuals wishing to neutralize business and investment risks. The President's Working Group on Financial Markets emphasized the importance that the market serves and stressed the immediate need to improve legal certainty under the CEA for the transactions (President's Working Group on Financial Markets, *Over-the-Counter Derivatives Markets and the Commodity Exchange Act* (1999)). Testimony provided to this Committee, as well as other committees of both the House and Senate, demonstrated widespread agreement that greater legal certainty under the CEA for over-the-counter derivative transactions would be beneficial for further development of these products.

To help achieve greater legal certainty for over-the-counter transactions, the legislation excludes from the CEA financial derivatives contracts traded off exchange by eligible contract participants. The legislation exempts any contract on a commodity which is not an agricultural commodity and not otherwise excluded from the CEA. Anti-fraud, anti-manipulation and transparency provisions of the CEA apply to exempt commodities. Further, the legislation excludes from the CEA electronic trading facilities that execute contracts traded on a principle to principle basis between eligible contract participants.

*Lifting the Ban on Single Stock Futures and Narrow-based Stock Index Futures.* In the early 1980's, disputes arose as to whether certain derivative transactions based on stock prices were best regulated as futures or securities. In 1982, the CFTC and the SEC agreed on a regulatory scheme (known as the Shad-Johnson Jurisdictional Accord). The Accord reinforced the SEC's jurisdiction over options on securities and recognized the CFTC's jurisdiction over options on certain futures. The CFTC also received jurisdiction over futures on broad-based stock indices. However, the SEC was given an explicit role in the determination of whether a stock index was properly characterized as broad-based. The question of what constitutes a narrow-based index under the Shad-Johnson Accord was litigated in *Board of Trade of the City of Chicago v. SEC* 187 F.3d 713 (7th Cir 1999). Futures on government securities were permitted. The SEC and the CFTC failed to reach agreement on regulation of futures on single stocks and narrow-based indices and on

options on these products. They therefore agreed to ban the products. The Congress codified the ban in 1982 (Futures Trading Act of 1982, P.L. 97-444). The SEC and the CFTC planned to undertake a study within five years of the Accord's codification regarding its operation and whether and on what terms the prohibition should be lifted. The agencies never conducted the study.

Futures industry officials have said that the Accord prohibition should be repealed because it has restricted U.S. futures exchanges from competing with other markets that trade derivatives on single stocks and narrow based indices. Banks and options exchanges have been permitted to trade products economically similar to futures products. A synthetic future can be created by buying a call option on a single stock and selling a put option on the same stock. A naked option (i.e., an option for which the buyer or seller does not hold an underlying security position) can also replicate the economic function of a future. Finally, many over-the-counter derivative transactions (equity swaps) can be used to achieve positions similar to those unavailable through stock futures. The Accord prohibits futures exchanges from competing with the options exchanges and banks who are trading in these instruments.

In the President's Working Group on Financial Markets 1999 report entitled *Over-the-Counter Derivatives Markets* and the Commodity Exchange Act, the members agreed that: "the current prohibition on single stock futures can be repealed if issues about the integrity of the underlying securities market and regulatory arbitrage are resolved." Such issues reflect legitimate regulatory concerns of both the SEC and the CFTC and their respective oversight committees. In a letter dated March 2, 2000, to Chairman Bliley, Chairman Levitt of the SEC and Chairman Rainer of the CFTC noted that these products should be subject to joint regulation by both agencies. The Committee agrees.

The legislation lifts the prohibition on the trading of security futures by providing that cash, options, and futures exchanges can trade single stock futures and narrow-based indices under a system of SEC and CFTC joint regulation. Exchanges registered with one agency are required to file a notice registration with the other agency. For futures products, the legislation extends SEC jurisdiction over the Futures Exchanges for core securities regulations, and the CFTC jurisdiction over the cash and options markets for core futures regulations.

The legislation also enhances competition among market centers by explicitly providing that Alternative Trading Systems (ATSs) may also trade in security futures.

For security futures, margin requirements, suitability, sales practice rules, and transaction fees are harmonized between the options and futures markets to minimize competitive disparity between the markets. On each market, security futures must trade in decimals with no mandatory minimum increments. Finally, to ensure equity in tax treatment between the markets trading security futures, the legislation provides that trading in security futures may commence only after tax treatments between options and futures are harmonized.

*CFTC Regulatory Reform.* The legislation also enacts changes to CFTC regulatory oversight of the futures markets.



## HEARINGS

The Subcommittee on Finance and Hazardous Materials held a hearing on H.R. 4541, the Commodity Futures Modernization Act of 2000 on July 12, 2000. The Subcommittee received testimony from: The Honorable Arthur Levitt, Securities and Exchange Commission; Mr. C. Robert Paul, Commodity Futures Trading Commission; Mr. Patrick M. Parkinson, Board of Governors of the Federal Reserve System; and Mr. Lewis A. Sachs, Department of the Treasury.

## COMMITTEE CONSIDERATION

On July 20, 2000, the Subcommittee on Finance and Hazardous Materials met in open markup session and approved H.R. 4541 for Full Committee consideration, as amended, by a voice vote. The Full Commerce Committee met in open markup session on July 25, 2000, and ordered H.R. 4541 reported to the House with a favorable recommendation, as amended, by a voice vote.

## COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 4541 reported. A motion by Mr. Bliley to order H.R. 4541 reported to the House, as amended, was agreed to by a voice vote.

The following amendment was agreed to by a voice vote:

An amendment in the nature of a substitute by Mr. Shimkus, No. 1, raising the threshold for eligible contract participants, exempting futures exchanges from the short sale rule, applying section 31 fees to security futures, delaying trading in security futures until tax treatments of options and futures are harmonized, providing for trading of security futures in decimals with no minimum mandatory increments, extending privacy provisions of Gramm-Leach-Bliley to Futures Commission Merchants, applying large trader reporting requirements to securities exchanges trading security futures, and allowing ATs to trade security futures on futures listed on securities exchanges.

## COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 4541, would result in additional revenues from the legislation's extension of the section 31 transaction fee to security futures. The Committee

estimates that this provision will generate revenues comparable to the section 31 fees on listed options.

#### COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974, with the following addition. The Committee notes that the legislation extends the section 31 transaction fee to security futures. This extension will generate additional revenues comparable to those generated by the section 31 fees on listed options.

#### CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 6, 2000.*

Hon. TOM BLILEY,  
*Chairman, Committee on Commerce,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4541, the Commodity Futures Modernization Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Ken Johnson and Mark Hadley.

Sincerely,

STEVEN LIEBERMAN  
(For Dan L. Crippen, Director).

Enclosure.

#### *H.R. 4541—Commodity Futures Modernization Act of 2000]*

Summary: H.R. 4541 would reauthorize funding for the activities of the Commodity Futures Trading Commission (CFTC) during the 2001–2005 period. The bill also would authorize the CFTC and the Securities and Exchange Commission (SEC) to regulate the trading of futures contracts on single stocks (single-stock futures) under certain conditions. In addition, H.R. 4541 would authorize those agencies to regulate trading of options on single-stock futures. Finally, the bill also would clarify that certain over-the-counter derivative transactions are outside of the jurisdiction of the CFTC.

Assuming appropriation of the necessary amounts, CBO estimates that implementing this legislation would cost \$368 million over the 2001–2005 period. Although most of this cost would be incurred by the CFTC, CBO estimates that the SEC would spend about \$4 million a year to regulate single-stock futures. H.R. 4541 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 4541 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates

that the costs, if any, would not exceed the threshold established in the act (\$55 million in 2000, adjusted annually for inflation). CBO's estimate of the impact of this bill on the private sector will be provided later in a separate statement.

**Estimated cost to the Federal Government:** The estimated budgetary impact of H.R. 4541 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—				
	2001	2002	2003	2004	2005
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Proposed changes to CFTC spending:					
Estimated authorization level .....	67	69	72	74	77
Estimated outlays .....	60	68	71	73	76
Proposed changes to SEC spending:					
Estimated authorization level .....	4	4	4	4	4
Estimated outlays .....	4	4	4	4	4
Total changes in spending:					
Estimated authorization level .....	71	73	76	78	81
Estimated outlays .....	64	72	75	77	80

**Basis of Estimate:** For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2001 and that the necessary amounts will be appropriated for each fiscal year.

H.R. 4541 would reauthorize funding for the activities of the CFTC during the 2001–2005 period. For 2000, the agency received an appropriation of \$63 million. Based on the agency's current budget and adjusting for anticipated inflation, this reauthorization would cost about \$59 million in 2001 and a total of \$343 million over the five-year period.

The bill also would make several changes to the Commodity Exchange Act that would increase the administrative costs of the CFTC. The CFTC would share oversight of single stock futures transactions with the SEC. CBO estimates that this change to the CFTC's regulatory responsibilities would require the agency to hire new staff. Based on information from the CFTC, CBO estimates that these changes to the CFTC's administrative responsibilities would cost \$1 million a year over the 2001–2005 period. The bill also clarifies that the CFTC does not have jurisdiction over certain over-the-counter transactions for derivatives.

H.R. 4541 also would require that the SEC play a significant role in overseeing the market for single stock futures. Based on information from the SEC, CBO estimates that the SEC would have to hire additional staff to handle these new responsibilities. These new personnel would cost about \$4 million a year during the 2001–2005 period.

To the extent that single-stock futures would be traded on national securities exchanges, these transactions would be subject to fees charged by the SEC. However, H.R. 4541 would allow the trading of single-stock futures one year after enactment of the bill if the Congress makes the income tax treatment of single-stock futures equal to the income tax treatment of stock options. Because the trading of single-stock futures would be contingent upon enactment of subsequent legislation, CBO estimates that the provisions of H.R. 4541 related to single-stock futures would not cause an increase in fee collections.

H.R. 4541 also would authorize the SEC and CFTC to allow the trading of options on single-stock futures three years after the enactment of the bill, if single-stock futures can be traded. To the extent that options on single-stock futures would be traded on national securities exchanges, these transactions would be subject to fees charged by the SEC. Because the trading of options on single-stock futures would be contingent upon a future action of the Congress, CBO estimates that the provisions of H.R. 4541 related to such options would not cause an increase in fee collections or revenues.

Pay-as-you-go considerations: None.

Estimated impact on State, local, and tribal governments: H.R. 4541 would preempt state laws affecting certain commodities transactions that are conducted in markets regulated by the Commodities Futures Trading Commission. The bill also would expand a preemption of privacy laws in certain states by placing entities regulated by the CFTC under federal rather than state privacy requirements. Both a new preemption and an expansion of an existing one would be mandates as defined by UMRA. CBO estimates that the costs of these mandates, if any, would not exceed the threshold in that act (\$55 million in 2000, adjusted annually for inflation). The bill would impose no other costs on state, local, or tribal governments.

Estimated impact on the private sector: CBO's estimate of the impact of H.R. 4541 on the private sector will be provided later in a separate statement.

Previous CBO estimate: On June 29, 2000, CBO transmitted a cost estimate for H.R. 4541 as ordered reported by the House Committee on Agriculture on June 27, 2000. The authorized activities for the CFTC and the SEC are different in those versions of the legislation, and our cost estimate reflects those differences. On July 11, 2000, CBO transmitted a cost estimate for S. 2697, the Commodity Futures Modernization Act of 2000, as ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry, on June 29, 2000. H.R. 4541 and S. 2697 would authorize the CFTC and SEC to carry out different activities, and our cost estimates reflect these differences.

Estimate prepared by: Federal costs: Ken Johnson and Mark Hadley; impact on State, local, and tribal governments: Susan Sieg Tompkins.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of impacts on State, local, and tribal governments prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. The estimate of impacts on the private sector was not timely submitted to the Committee. The Chairman of the Committee shall cause such estimate to be printed in the Congressional Record when it is submitted to the Committee.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title; table of contents*

This section provides the table of contents and short title of the bill, the Commodity Futures Modernization Act of 2000.

*Section 2. Purposes*

This section lists eight purposes for the bill including: reauthorizing the CFTC; streamlining the CEA; eliminating unnecessary regulation for the futures exchanges; transforming the regulatory role of the CFTC; providing a legislative and regulatory framework for the trading of futures on securities; providing CFTC jurisdiction over the retail foreign exchange market and bucket shops; promoting innovation and reducing systemic risk for OTC derivatives; allowing clearing of OTC derivatives; and enhancing the competitive position of the U.S. financial institutions and markets.

## TITLE I—COMMODITY EXCHANGE ACT AMENDMENTS

*Section 101. Definitions*

Section 101 adds definitions to section 1a of the CEA for the following terms: “alternative trading system”; “derivatives clearing organization”; “designated future on a security”; “electronic trading facility”; “eligible commercial participant”; “eligible contract participant”; “exempt commodity”; “excluded commodity”; “financial institution”; “hybrid instrument”; “margin”; “narrow based security index”; “nonexempt security”; “option”; “organized exchange”; “registered entity”; “security”; “security future”; “security future product”; and “trading facility”.

*Section 102. Agreements, contracts, and transactions in foreign currency, government securities and certain other commodities*

This section redesignates section 2(a)(1)(A)(ii) of the CEA (the “Treasury Amendment”) as section 2(c) and clarifies the application of the Treasury Amendment. The new section 2(c) clarifies the list of products that are excluded from the CEA under the Treasury Amendment.

New subsection (c)(2) excludes foreign currency transactions from CFTC regulation, other than those conducted on an organized exchange, between specified regulated entities and persons who are not eligible contract participants.

The bill defines “organized exchange” as a trading facility that either allows retail customers, permits agency trades, or has a self-regulatory role. New subsection (c)(2)(B) provides the CFTC with jurisdiction over retail foreign currency transactions that are not traded on an organized exchange and that are not regulated by another federal regulator. This would allow the CFTC to take enforcement action against illegal bucket shops.

#### *Section 103. Legal certainty for excluded derivatives transactions*

This section amends section 2 of the CEA to create a new subsection (d), which provides that nothing in the CEA applies to a transaction in an excluded commodity if the transaction (1) is entered into only between eligible contract participants and (2) is not executed on a trading facility. New section 2 also provides that nothing in the CEA applies to a transaction in an excluded commodity executed or traded on electronic trading facilities as long as the transaction is entered into on a principal-to-principal basis by certain eligible contract participants trading for their own accounts.

#### *Section 104. Excluded electronic trading facilities*

This section amends section 2 of the CEA to create a new subsection (e) which excludes from the CEA electronic trading of excluded and exempt commodities by eligible contract participants. Paragraph (2) provides that nothing in the CEA prohibits a contract market or derivatives transaction execution facility from establishing and operating an excluded electronic trading facility.

#### *Section 105. Hybrid instruments*

Section 105 amends section 2 of the CEA to create a new subsection (f) that provides that nothing in the CEA applies to a hybrid instrument that is predominantly a security or depository instrument. New paragraph (2) sets forth conditions for determining predominance to cover any hybrid instrument in which (1) the issuer of the instrument receives payment in full of the purchase price at the time the instrument is delivered; (2) the purchaser is not required to make additional payments; (3) the issuer of the instrument is not subject to mark-to-market margining requirements; and (4) the instrument is not marketed as a futures contract or as an option on a futures contract. New paragraph (3) clarifies that mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held to secure the repayment obligations. This section does not prevent the issuer of a hybrid instrument from using exchange-traded futures or other instruments requiring mark-to-market margin requirements to hedge its obligations under the hybrid instrument.

#### *Section 106. Futures on securities*

Section 106 ensures that excluded OTC equity derivatives remain outside the CEA and jurisdiction of the CFTC.

*Section 107. Transactions in exempt commodities and swap transactions*

This section amends section 2 of the CEA by adding a new subsection (h) to provide legal certainty for exempt commodities. New section 2(h) provides that nothing in the CEA applies to transactions in exempt commodities that are entered into between eligible participants and are not entered into on a trading facility. The amendment further provides that nothing in the CEA applies to transactions in an exempt commodity that are conducted on a principal to principal basis between eligible contract participants on an electronic trading facility. However, transactions in exempt commodities are subject to the clearing system provisions of the bill, and the fraud and anti-manipulation provisions of the Act. In addition, the CFTC may prescribe rules to ensure the timely dissemination of electronic trading facility data if the CFTC determines that the electronic facility performs a significant prices discovery function.

*Section 108. Protection of the public interest*

Section 108 rewrites section 3 of the CEA that lists the responsibilities of the CFTC and purposes of the CEA in protecting the public interest. These include: promoting financial innovation and competition; protecting investors from fraud and manipulation; fostering efficiency with transparent price dissemination; and preventing market manipulation and minimizing the risk of systemic failure.

*Section 109. Prohibited transactions*

Section 109 rewrites section 4c of the CEA for clarity.

*Section 110. Designation of boards of trade as contract markets*

This section amends section 5 and 5a of the CEA by creating a new section 5 providing for the designation of boards of trade as contract markets. Subsection (b) contains criteria that boards of trade must meet in order to be designated as a contract market. These include establishing and enforcing rules preventing market manipulation; ensuring fair and equitable trading by authorizing various futures exchange transactions; specifying how the trade execution facility operates, including any electronic matching systems; ensuring the financial integrity of transactions; disciplining members or market participants who violate the rules; allowing for public access to the board of trade rules; and enabling the board of trade to obtain information in order to enforce its rules. Existing contract markets are grandfathered in under new subsection (c). The 18 core principles that must be met to maintain designation as a contract market are contained in new subsection (d) and provide that a board of trade must: monitor and enforce compliance with the contract market rules; list contracts that are not susceptible to manipulation; monitor trading to prevent manipulation, price distortion and delivery or settlement disruptions; adopt position limits for speculators and hedgers; adopt rules to provide for the exercise of emergency authority, including the authority to liquidate or transfer open positions, suspend trading and make margin calls; make available the terms and conditions of the contracts and the mechanisms for executing transactions; publish daily infor-

mation on prices, bids, offers, volume, open interest, and opening and closing ranges; provide a competitive, open and efficient market and mechanism for executing transactions; provide for the safe storage of all trade information in a readily usable manner to assist in fraud prevention; provide for the financial integrity of the contracts, the futures commission merchants and customer funds; protect market participants from abusive practices; provide for alternative dispute resolutions for market participants and intermediaries; establish and enforce rules regarding fitness standards for those involved in market governance; establish and enforce rules to minimize conflicts of interest in a contract market; ensure that the governing board reflects the composition of the market participants (in the case of mutually owned exchanges); maintain records; and avoid taking any action that restrains trade or imposes anti-competitive burdens on the markets.

Subsection (e) provides that, with respect to futures contracts involving agricultural or metal commodities enumerated in section 1a(3) of the CEA, such contracts may only trade on designated contract markets. However, upon application by any person, the CFTC may prescribe rules and regulations to allow such agricultural commodities to trade on a derivatives transaction execution facility in instances where it would promote responsible economic or financial innovation and competition.

#### *Section 111. Derivatives transaction execution facilities*

Section 111 amends the CEA by adding a new section 5a authorizing a new trading designation called a derivatives transaction execution facility (DTEF). Under subsection (b), a board of trade may elect to operate as a DTEF rather than a contract market if it meets the DTEF designation requirements. A registered DTEF may trade any non-designated futures contract if the commodity underlying the contract has a nearly inexhaustible supply, is not readily susceptible to manipulation, and does not have a cash market in commercial practice. Eligible DTEF traders include authorized contract market participants and persons trading through registered futures commission merchants with capital of at least \$20,000,000 that are members of a self-regulatory organization (SRO) and a clearing organization. Boards of trade that have been designated as contract markets may operate as DTEFs if they provide a separate location for DTEF trading or, in the case of an electronic system, identify whether the trading is on a DTEF or contract market. Security future products, except futures on exempt securities, may not be traded on a DTEF.

Subsection (c) provides criteria for boards of trade that wish to register as DTEFs, including: establishing and enforcing trading rules that will deter abuses, provide market participants impartial access to the markets, and capture information that may be used in rule enforcement. In addition, subsection (c) requires DTEFs to establish trading procedures to be used and to provide for the financial integrity of DTEF transactions.

To maintain registration as a DTEF, a board of trade must comply with 9 core principles listed in subsection (d). It must: maintain and enforce rules; ensure orderly trading and provide trading information to the CFTC; publicly disclose information regarding contract terms, trading practices, and financial integrity protections;



provide information on prices, bids and offers to market participants as well as daily information in volume and open interest for the actively traded contracts; establish and enforce rules regarding fitness standards for those involved in DTEF governance; establish and enforce rules to minimize conflicts of interest in a derivatives transaction execution facility; maintain records; and avoid taking any action that restrains trade or imposes anti-competitive burdens on the markets.

Subsection (e) allows a broker-dealer, bank, or Farm Credit Institution in good standing to act as an intermediary on behalf of its customers and to receive customer funds serving as margin or security for the customer's transactions. If such entity holds the DTEF customer funds or accounts for more than 1 business day, such entity must be a registered FCM and a member of a registered futures association. The CFTC is required to coordinate with the SEC, the Secretary of the Treasury, and the Federal banking regulatory authorities in adopting rules to implement this subsection.

Under subsection (f), the CFTC may adopt regulations to allow FCMs to give customers that are eligible contract participants the right to not segregate customer funds for purposes of trading on the DTEF.

Subsection (g) clarifies that a DTEF may trade derivatives that otherwise would be excluded, exempted or not subject to the CEA, other than derivatives involving securities (including security future products), and the CFTC has exclusive jurisdiction only when these instruments are traded on a DTEF.

#### *Section 112. Derivatives clearing organizations*

This section amends the CEA to create a new section 5b regarding derivatives clearing organizations.

Subsection (a) makes it unlawful for a derivatives clearing organization to operate unless it is registered with the CFTC.

Subsection (b) provides an exclusion from the requirements in subsection (a) for clearing organizations that meet two requirements: first, the clearing organization must be registered with another federal regulatory agency (SEC or a federal banking regulator) or be subject to a foreign regulatory authority recognized by U.S. federal regulators; and second, the clearing organization must not clear futures or options other than (a) futures or options on security future products or (b) options on securities.

Subsection (c) provides that organizations that are not excluded under subsection (b) may voluntarily register with the CFTC as a clearing organization.

Subsection (d) sets forth the process for applying with the CFTC to be a clearing organization under this section, and provides 14 core principles that must be met and maintained in order to maintain registration as a clearing organization. The clearing organization must: register as a derivatives clearing organization; demonstrate adequate financial, operational and managerial resources; establish participant and product eligibility standards; have the ability to manage risks associated with derivatives clearing organizations; have the ability to perform proper settlement; have standards and procedures to protect member and participant funds; have rules and procedures to deal with defaults; monitor and enforce rules; ensure system safeguards for daily processing, clearing, and

settlement of transactions; provide the CFTC with necessary information for the CFTC's oversight function; maintain and keep available records; make rules and procedures fully available; enter into and abide by information-sharing agreements; and avoid imposing any unreasonable or anti-competitive burden on trading.

Subsection (e) grandfathers existing derivatives clearing organizations that clear transactions for designated contract markets prior to date of enactment.

Subsection (f) authorizes the CFTC to seek the appointment of a trustee by an appropriate U.S. district court if the registration of a derivatives clearing organization is suspended or revoked by the CFTC under section 5e.

Subsection (g) requires the CFTC to facilitate and coordinate with Federal banking agencies and the SEC with respect to clearing organizations registered under this Act and other regulated clearing facilities.

### *Section 113. Common provisions applicable to registered entities*

Section 113 amends the CEA to create a new section 5c that contains provisions affecting all registered entities (contract markets, DTEFs, and derivatives clearing organizations).

Subsection (a) allows the CFTC to issue or approve interpretations to describe what would constitute an acceptable business practice under the core principals for registered entities.

Subsection (b) allows a registered entity to delegate its self regulatory functions to a registered futures association, while specifying that responsibility for carrying out these functions remain with the registered entity.

Subsection (c) enables the registered entity to trade new products or adopt or amend rules by providing the CFTC (or, in the case of a government security product, the Secretary of the Treasury) a written certification that the new contract or new rule or amendment complies with the CEA. This subsection would allow a registered entity to request that the CFTC grant prior approval of a new contract, new rule or rule amendment. For enumerated commodity products, a contract market (futures exchange) shall submit to the CFTC for prior approval each rule amendment that materially changes the terms and conditions of a contract that has already been listed and has substantial open interest.

Subsection (d) reserves all of the CFTC's emergency powers.

### *Section 114. Exempt boards of trade*

This section amends the CEA to create a new section 5d regarding exempt boards of trade. Under subsections (a) and (b), futures contracts traded on an exempt board of trade would be exempt from the CEA (except section 2(g) regarding equity futures) if: (1) the commodity underlying the futures contract has an inexhaustible deliverable supply, is not readily susceptible to manipulation, or has no cash market; (2) the futures contracts are entered into only by eligible contract participants; and (3) the contracts do not involve securities (including security indices).

Subsection (c) subjects futures contracts traded on an exempt board of trade to the anti-fraud and anti-manipulation provisions of the CEA. Under subsection (d), if the CFTC finds that an exempt board of trade is a significant source of price discovery for the un-

derlying commodity, the board of trade shall disseminate publicly on a daily basis trading volume, opening and closing price ranges, open interest, and other trading data as appropriate to the market.

*Section 115. Suspension or revocation of designation as contract market*

Section 115 amends redesignated section 5e of the CEA to authorize the CFTC to suspend the registration of a registered entity for 180 days for any violation of the CEA.

*Section 116. Authorization of appropriations*

Section 116 amends section 12(d) of the CEA by reauthorizing appropriations through fiscal year 2005.

*Section 117. Preemption*

This section rewrites paragraph 12(e)(2) of the CEA for clarity and to conform with changes made in the bill. New section 12(e)(2) restates that the CEA supercedes and preempts other laws in the case of transactions conducted on a registered entity or subject to regulation by the CFTC (even if outside the United States), and adds that, in the case of excluded electronic trading facilities and any agreements, contracts or transactions that are excluded commodities or covered by a 4(c) exemption, the CEA supercedes and preempts state gaming and bucket shop laws (except for the anti-fraud provisions of bucket shop laws that are generally applicable).

*Section 118. Consideration of costs and benefits and antitrust laws*

Section 118 amends section 15 of the CEA to add a new subsection (a) requiring the CFTC, before promulgating regulations and issuing orders, to consider the costs and benefits of its action. This does not apply to orders associated with an adjudicatory or investigative process, or to emergency actions or findings of fact regarding compliance with CFTC rules.

*Section 119. Contract enforcement between eligible counterparties*

This section amends subsection 22(a) of the CEA to provide a safe harbor so that excluded transactions will not be voidable based solely on the failure of the transaction to comply with the terms or conditions of an exclusion or exemption from the Act or CFTC regulations.

The Committee intends that any failure to provide a statutory exclusion or exemption for any type of swaps transactions does not reflect, and should not be construed to reflect, a determination by Congress that these categories of swaps transactions are subject to the CEA.

*Section 120. Special procedures to encourage and facilitate bona fide hedging by agricultural producers*

This section authorizes the CFTC to consider several factors to improve domestic agricultural producers' ability to use contract markets for hedging price risk. Specifically, this section authorizes CFTC, in issuing rules or orders, to consider: procedures to facilitate the orderly delivery of agricultural commodities, including temporary storage costs; the ease with which domestic agricultural producers may participate in contract markets, including cost and

margin requirements; and flexibility in the minimum quantities of contract size. This section also requires the CFTC to report to the House and Senate Agriculture Committees regarding steps taken to implement this section.

*Section 121. Rule of construction*

Section 121 provides that nothing in the CEA as amended by this legislation supersedes, affects, or otherwise limits or expands the scope and applicability of laws governing the Securities and Exchange Commission unless expressly provided.

*Section 122. Technical and conforming amendments*

Section 122 makes technical and conforming amendment throughout the CEA to reflect changes made by the bill.

*Section 123. Privacy*

This section extends privacy provisions of the Gramm-Leach-Bliley Act to any entity or person subject to the jurisdiction of the CFTC under the CEA.

*Section. 124. Report to Congress*

Section 124 requires the CFTC to study the CEA and its rules, regulations and orders governing the conduct of CFTC's registrants and report to Congress within one year.

*Section. 125. Effective date*

This section specifies that the changes made by this legislation take effect on the date of enactment.

*Section 126. International activities of the Commodity Futures Trading Commission*

This section contains Congressional findings about the changing and global nature of derivatives markets, the increase in the use of data processing and communications technologies that enable users of risk management services to analyze and compare services on a worldwide basis, and the need for financial regulatory policy to be flexible and to avoid compromising U.S. competitiveness.

This section also establishes that it is the sense of Congress that it is important for the CFTC, as part of its international activities, to continue to coordinate with foreign regulatory authorities, participate in international regulatory organizations and forums, and provide technical assistance to foreign government authorities in order to encourage and facilitate cross-border transactions, reduce unnecessary obstacles, and enhance international cooperation and information sharing.

## TITLE II—SECURITIES ACTS AMENDMENTS

### SUBTITLE A—AMENDMENTS

*Section 201. Definitions under the Securities Exchange Act of 1934*

Section 201 amends section 3 of the Securities Exchange Act of 1934 (Exchange Act) to add definitions of the terms “security future,” “security future product,” and “narrow-based security index” (15 U.S.C. 78c). The question of what constitutes a narrow-based

index under the Shad-Johnson Accord was litigated in *Board of Trade of the City of Chicago v. SEC* 187 F.3d 713 (7th Cir 1999). The Committee does not intend any provision of title II, including but not limited to the definition of “narrow-based security index” in the Exchange Act, the Securities Act of 1933, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, to disturb the determination of the Seventh Circuit in that case.

This section also amends section 3 to add definitions of the terms “margin,” “margin level,” “level of margin,” “higher margin level,” and “higher level of margin.” In addition, section 3 includes the term “security future” in the definitions of the terms “security” and “equity security.”

*Section 202. Regulatory relief for markets trading security future products*

Section 202 amends section 6 of the Exchange Act to provide for expedited SEC registration of CFTC designated contract markets that fall within the statutory definition of the term “exchange” by trading security future products. These “notice registrant” exchanges become registered by filing a notice with the SEC. Because notice registrant exchanges continue to be subject to the CEA, they are exempt from all but the core provisions of the federal securities laws applicable to exchanges.

Section 202 also amends section 6 of the Exchange Act to permit notice registrant exchanges to increase margin levels above minimum levels established jointly by the SEC and the CFTC by submitting proposed rule changes through the expedited filing process described below. In addition, amended section 6 provides that notice registrant exchanges are required to submit any other proposed rule changes relating to margin (except for changes resulting in higher margin levels) for SEC approval under section 19(b)(2) of the Exchange Act.

Section 202 further amends section 6 of the Exchange Act to provide a waiting period before security future products may be traded. Specifically, section 6 prohibits the trading of security future products until the later of: (a) the date on which federal income tax treatment for security future products is equivalent to that for equity options; or (b) one year after enactment of the legislation.

Section 202 amends section 19 of the Exchange Act to limit the types of proposed rule changes that notice registrant exchanges have to file and to provide for expedited treatment of such proposed rule changes. In particular, section 19 requires notice registrant exchanges to file with the SEC under new section 19(b)(7) only proposed rule changes that relate to higher margin levels, fraud or manipulation, record keeping, reporting, listing standards, decimal pricing for security future products, sales practices for security futures products for persons who effect transactions in security future products, and rules effectuating their obligations to enforce the federal securities laws. Notice registrant exchanges are required to file these proposed rule changes with the CFTC simultaneously. The SEC is permitted to abrogate a proposed rule change filed by a notice registrant exchange after it takes effect, but only if the SEC determines that the rule change unduly burdens competition, conflicts with the federal securities laws, does not promote

efficiency, or is inconsistent with the public interest and the protection of investors.

Section 202 provides for SEC consultation with the CFTC, except for emergencies, for proposed rule changes that primarily concern conduct related to security future product transactions submitted by national securities exchanges and national securities associations that are not notice registrants.

Section 202 also amends section 19 of the Exchange Act to provide that the SEC does not have the authority to review final disciplinary proceedings by notice registrant exchanges except to the extent that they relate to a violation of the federal securities laws or a violation of the exchange's rules with respect to a security future product. Finally, section 202 requires that security future products be priced in decimals with no SEC or CFTC mandated minimum increments.

*Section 203. Regulatory relief for intermediaries trading security future products*

Section 203 amends section 15 of the Exchange Act to provide for expedited SEC registration of CFTC registered futures commission merchants (FCMs) and introducing brokers that would fall within the statutory definition of the term "broker" or "dealer" solely by effecting transactions in security future products. These "notice registrant" broker-dealers become registered by filing a notice with the SEC. Because notice registrant broker-dealers continue to be subject to the CEA, they are exempt from all but the core provisions of the federal securities laws applicable to broker-dealers.

Section 203 also amends section 15 of the Exchange Act to provide an exemption from all broker-dealer registration requirements for floor brokers and floor traders on CFTC designated contract markets.

Section 203 amends section 15A of the Exchange Act to allow futures associations to become national securities associations for the limited purpose of regulating the activities of notice registrant broker-dealers.

Amended section 15A also exempts futures associations from all but the core requirements of the federal securities laws applicable to national securities associations and provides for limited review by the SEC of futures association rules relating to security future products. A futures association, such as the National Futures Association (NFA), becomes a national securities association automatically as long as it meets certain conditions. The NFA (and other limited purpose national securities associations) are expected to enforce securities laws applicable to security future products. As a result, notice registrant broker-dealers that belong to the NFA do not have to join the National Association of Securities Dealers.

Section 203 amends the Securities Investor Protection Act of 1970 to exempt notice registrant broker-dealers from the requirement to join the Securities Investor Protection Corporation (SIPC) (15 U.S.C. 78bbb–78kkk). In addition, section 203 extends the protections of SIPC to customer positions in security future products that are held by registered broker-dealers (other than notice registrant broker-dealers).

Finally, section 203 makes a technical amendment to section 15(i)(6)(A) of the Exchange Act to avoid extending the definition of “new hybrid product” to security future products.

*Section 204. Special provisions for interagency cooperation*

Section 204 amends section 17 of the Exchange Act to permit the SEC to examine limited purpose national securities associations, notice registrant broker-dealers and exchanges. Amended section 17 requires the SEC to notify the CFTC of such examinations. In addition, amended section 17 requires the SEC, to the fullest extent possible, to use the CFTC’s examination reports.

In addition, it requires the SEC and the CFTC jointly to prescribe rules to require large trader reporting with respect to security future products. Those rules must specify a reporting level for each security future product, a format for reporting, and the procedures for filing the reports with the SEC and the CFTC.

*Section 205. Maintenance of market integrity for security future products*

Section 205 is intended to ensure effective enforcement against unlawful practices with respect to the trading of security future products. Specifically, section 205 amends sections 9(b), 9(g), 20(d), and 21A(a)(1) of the Exchange Act, which relate to the trading of options and their underlying securities, so they expressly apply to security future products. In addition, section 205 amends section 21 of the Exchange Act to require the SEC to file with the CFTC a notice of the commencement of any proceeding, and a copy of any order issued, against a notice registrant broker-dealer or exchange.

*Section 206. Special provisions for the trading of security future products*

Section 206 amends section 6 of the Exchange Act to provide minimum requirements for the listing and trading of security future products, including requirements that trading in the security future not be readily susceptible to manipulation or to causing or being used in the manipulation of the underlying security, transactions in security future products be effected by broker-dealers subject to suitability requirements generally comparable to those of the National Association of Securities Dealers (NASD), and procedures for coordinated surveillance. This section also provides that any market other than a national securities exchange or national securities association registered pursuant to section 15(A)(a), such as an ATS, may trade a security future product provided that it does so pursuant to procedures and rules established by a national securities association regarding surveillance coordination, audit trails, and trading halt coordination. The section requires that these rules be adopted no later than one year after enactment of the bill so that trading of security future products will not commence until ATSs also can trade the products. The Committee intends that the rules adopted by the NSA pertaining to ATSs not impose an undue burden on competition. The Committee further intends that the SEC disapprove any SRO rule that would allow the trading of security future products on an exchange on terms more favorable than those pertaining to an ATS, consistent with the requirements of section 3(f) of the Securities Exchange Act of

1934. The Committee intends that this section improve competition within the marketplace by allowing ATSs to trade security futures in full and fair competition with exchanges and the NASD.

After a study, this section allows the SEC and CFTC jointly to permit options on security futures.

This section also amends section 7 of the Exchange Act to permit the SEC to establish margin requirements for security futures and narrow based indices after consultation with the CFTC.

Section 206 also amends section 11A of the Exchange Act to require the SEC to consult with the CFTC on national market system rulemaking relating to security future products. In addition, amended section 11A provides that any national market system rules adopted by the SEC do not apply to trading on notice registrant exchanges unless the CFTC specifically orders that they should apply.

This section also amends section 17A of the Exchange Act to provide that clearing agencies regulated by the CFTC do not have to register with the SEC in order to clear and settle transactions in security future products. Amended section 17A also provides that all clearing agencies that clear security future products (whether registered or exempted from registration) must coordinate with and develop links with one another.

Finally, section 206 amends section 12 of the Exchange Act to require the SEC to consult with the CFTC before suspending trading in a security future product or taking emergency action with respect to a security future product.

*Section 207. Amendments relating to the clearance and settlement of over-the-counter derivatives*

This section amends section 17A of the Exchange Act to provide registered clearing agencies with the express authority to clear and settle over-the-counter derivatives.

*Section 208. Amendments relating to registration and disclosure issues under the Securities Act of 1933 and the Securities Exchange Act of 1934*

Section 208 amends section 2 of the Securities Act of 1933 (Securities Act) to incorporate definitions of the terms “security future,” “security future product,” and “narrow-based security index.” (15 U.S.C. 77b). In addition, section 2 includes the term “security future” in the definition of the term “security.”

Section 208 further amends section 2 of the Securities Act to provide that any offer or sale of a security future product by or on behalf of an issuer of underlying securities, any affiliate of an issuer, or an underwriter constitutes a contract for sale of, sale of, offer for sale of, or offer to sell the underlying securities.

Section 208 also amends section 3 of the Securities Act to exempt from the registration requirements of section 5 any security future product that is (1) cleared by a clearing agency registered under section 17A of the Exchange Act or exempt from registration under section 17A(b)(7) of the Exchange Act; and (2) listed on a registered exchange or a national securities association registered pursuant to section 15A(a) of the Exchange Act.

Further, section 208 amends section 12(a)(2) of the Securities Act to exempt offers or sales of security futures that are exempt from



section 5 by reason of section 3(a) from the liability provisions of section 12(a)(2) of the Securities Act.

Section 208 amends section 12(a) of the Exchange Act to exempt security future product listed on a national securities exchange from the registration requirements of that section. Because the security future product need not be registered under section 12, the provisions of sections 13, 14 and 16 of the Exchange Act do not apply to the security future product as a class of equity security registered under section 12. Sections 13(e), 14(d) and 14(e) of the Exchange Act still apply to the securities underlying security futures.

Section 208 also amends section 12(g)(5) of the Exchange Act to clarify that, for purposes of section 12(g), a security future product is not to be considered a separate class of equity security of the issuer of the securities underlying the security future product.

Lastly, section 208 amends section 16 of the Exchange Act to provide that, for purposes of section 16 of the Exchange Act, ownership of and transactions in security futures are considered ownership of and transactions in the underlying equity securities.

*Section 209. Amendments to the Investment Company Act of 1940 and the Investment Advisers Act of 1940*

Section 209 amends section 2 of the Investment Company Act of 1940 (Investment Company Act) to incorporate definitions of the terms “security future” and “narrow-based security index” (15 U.S.C. 80a–2). In addition, section 2 of the Investment Company Act is amended to include the term “security future” in the definition of the term “security.”

Section 209 will assure that a publicly offered pooled investment vehicle that invests in security futures and that is not excluded from the definition of “investment company” under the Investment Company Act will be encompassed within the definition of an “investment company” and regulated as such under the Investment Company Act. Mutual funds investing in securities and pools investing in security futures would be engaged in functionally equivalent economic activity. The performance of security futures necessarily will be closely correlated with the performance of the underlying securities. Pools of securities and pools of comparable security futures can be expected to have very similar performance results. From an investor’s point of view, purchasing shares of a mutual fund, or interests in a similar pool that invests in security futures, will appear to be economically equivalent. As a result, the Committee provides for the regulation of these pools as investment companies.

Section 209 also amends section 202 of the Investment Advisers Act of 1940 (Advisers Act) to add definitions of the terms “security future” and “narrow-based security index” and to include the term “security future” in the definition of the term “security” (15 U.S.C. 80b–2). Section 209 also adds new section 203(b)(6) to the Advisers Act, which exempts from the registration provisions of the Advisers Act any investment adviser that is registered with the CFTC as a commodity trading adviser, whose business does not consist primarily of acting as an investment adviser and that does not act as an investment advisor to an investment company registered under the Investment Company Act or a business development company

that has elected to be regulated under the Investment Company Act and has not withdrawn such election.

The SEC and the CFTC will promulgate complementary rules or regulations to give effect to these provisions.

*Section 210. Preemption*

Section 210 amends Section 28 of the Exchange Act to clarify the preemption of the state laws related to gaming and bucket shops.

Subtitle B—Conforming Amendments to the Commodity Exchange Act

*Section 221. Amendments relating to the jurisdiction of the Securities and Exchange Commission*

Section 221 amends section 2 of the CEA to clarify that security futures are jointly regulated by the CFTC and the SEC, and that security futures are not subject to the exclusive jurisdiction of the CFTC.

Section 221 also amends section 2 of the CEA to provide criteria that security futures will have to meet before they could be traded on a designated contract market. These criteria include requirements that trading in the security future product not be readily susceptible to manipulation or to causing or being used in the manipulation of the underlying security, transactions in security futures be effected only by futures commission merchants, introducing brokers, commodity trading advisers, commodity pool operators, or associated persons subject to suitability requirements comparable to those of a registered national securities association, and procedures for coordinated surveillance be in place to detect manipulation and insider trading between the market trading the security future product and markets trading the underlying securities and other related securities.

In addition, section 221 amends section 2 of the CEA to permit the CFTC to examine designated contract markets, futures commission merchants, introducing brokers, commodity trading advisers, commodity pool operators, and associated persons that are registered with the CFTC under the expedited notice registration process described below. Amended section 2 requires the CFTC to notify the SEC of such examinations. In addition, amended section 2 requires the CFTC to the fullest extent possible, to use the SEC's examination reports.

Moreover, section 221 allows the SEC and CFTC jointly to permit options on security futures after a period of study.

Section 221 amends section 2 of the CEA to permit the CFTC and the SEC to establish margin requirements for security futures.

Furthermore, section 221 amends section 4m of the CEA to exempt from regulation as commodity trading advisers, investment advisers registered with the SEC whose business does not consist primarily of acting as a commodity trading advisor and that does not act as a commodity trading advisor to any investment trust, syndicate, or similar form of enterprise that is engaged primarily in trading in any commodity for future delivery on or subject to the rules of any contract market. Finally, section 221 amends section 16 of the CEA to clarify that this section's provisions do not apply

to investigations involving any security underlying a security future product.

*Section 222. Regulatory relief under the Commodity Exchange Act for markets and intermediaries trading security future products*

Section 222 adds section 5f to the CEA to provide for expedited CFTC registration as designated contract markets of national securities exchanges, national securities associations, and alternative trading systems that are registered with the SEC that would fall within the statutory definition of the term “board of trade” by trading security future products. These “notice registrant” designated contract markets become registered by filing a notice with the CFTC. Because notice registrant designated contract markets continue to be subject to the federal securities laws, they are exempt from all but the core provisions of the CEA applicable to designated contract markets.

This section also amends section 4f of the CEA to provide for expedited CFTC registration of SEC registered broker-dealers that would fall within the statutory definition of the term “futures commission merchant” or “introducing broker” by effecting transactions in security future products. These “notice registrants” become registered by filing a notice with the CFTC. In addition, amended section 4f provides that SEC registered broker-dealers that would fall within the definition of “floor broker” or “floor trader” by effecting transactions in security future products are exempt from CEA registration. Because these entities continue to be subject to the federal securities laws, they are exempt from all but the core provisions of the CEA that otherwise would apply to them.

In addition, section 222 amends section 4k of the CEA to provide exemptions from relevant provisions of the CEA for associated persons of SEC registered broker-dealers.

*Section 223. Amendments relating to the notification of investigations and enforcement actions*

Section 223 amends sections 6, 6c, and 8 of the CEA to require the CFTC to file with the SEC a notice of the commencement of any proceeding, and a copy of any order issued, against a notice registrant designated contract market, futures commission merchant, introducing broker, floor broker, or floor trader.

Subtitle C—Effective Date

*Section 231. Effective date*

This section provides that amendments made by this bill become effective on the date of the enactment of the legislation.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## COMMODITY EXCHANGE ACT

\* \* \* \* \*

## SEC. 1a. DEFINITIONS.

As used in this Act:

(1) *ALTERNATIVE TRADING SYSTEM.*—The term “alternative trading system” means an organization, association, or group of persons that is registered as a broker or dealer pursuant to section 15(b) of the Securities Exchange Act of 1934 (except paragraph (11) thereof) and that performs the functions commonly performed by an exchange (as defined in section 3(a)(1) of such Act) but that is exempt from the definition of the term “exchange” under such section 3(a)(1) by rule or regulation of the Securities and Exchange Commission on terms that require compliance with regulations of the trading functions of such organization, association, or group of persons.

[(1)] (2) *BOARD OF TRADE.*—The term “board of trade” means any exchange or association, whether incorporated or unincorporated, of persons who are engaged in the business of buying or selling any commodity or receiving the same for sale on consignment.

[(2)] (3) *COMMISSION.*—The term “Commission” means the Commodity Futures Trading Commission established under section 2(a)(2).

[(3)] (4) *COMMODITY.*—The term “commodity” means wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, *Solanum tuberosum* (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions as provided in Public Law 85–839 (7 U.S.C. 13–1), and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.

[(4)] (5) *COMMODITY POOL OPERATOR.*—The term “commodity pool operator” means any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, except that the term does not include such persons not within the intent of the definition of the term as the Commission may specify by rule, regulation, or order.

[(5)] (6) *COMMODITY TRADING ADVISOR.*—

(A) *IN GENERAL.*—Except as otherwise provided in this paragraph, the term “commodity trading advisor” means any person who—

(i) for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in—

(I) any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or *derivatives transaction execution facility*;

\* \* \* \* \*

(B) EXCLUSIONS.—Subject to subparagraph (C), the term “commodity trading advisor” does not include—

(i) \* \* \*

\* \* \* \* \*

(vi) any contract market or *derivatives transaction execution facility*; and

\* \* \* \* \*

[(6)] (7) CONTRACT OF SALE.—The term “contract of sale” includes sales, agreements of sale, and agreements to sell.

[(7)] (8) COOPERATIVE ASSOCIATION OF PRODUCERS.—The term “cooperative association of producers” means any cooperative association, corporate, or otherwise, not less than 75 per cent in good faith owned or controlled, directly or indirectly, by producers of agricultural products and otherwise complying with the Act of February 18, 1922 (42 Stat. 388, chapter 57; 7 U.S.C. 291 and 292), including any organization acting for a group of such associations and owned or controlled by such associations, except that business done for or with the United States, or any agency thereof, shall not be considered either member or nonmember business in determining the compliance of any such association with this Act.

(9) DERIVATIVES CLEARING ORGANIZATION.—

(A) IN GENERAL.—The term “derivatives clearing organization” means a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to a derivative agreement, contract, or transaction—

(i) enables each party to the derivative agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties;

(ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by parties in the derivatives clearing organization; or

(iii) otherwise provides clearing services or arrangements that mutualize or transfer among parties in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the parties.

(B) EXCLUSIONS.—The term “derivatives clearing organization” does not include an entity, facility, system, or organization solely because it arranges or provides for—

(i) settlement, netting, or novation of obligations resulting from agreements, contracts, or transactions, on a bilateral basis and without a centralized counterparty;

(ii) settlement or netting of cash payments through an interbank payment system; or

(iii) settlement, netting, or novation of obligations resulting from a sale of a commodity in a transaction in the spot market for the commodity.

(10) *ELECTRONIC TRADING FACILITY*.—The term “electronic trading facility” means a trading facility that—

(A) operates by means of an electronic network; and

(B) maintains a real-time audit trail of bids, offers, and the matching of orders or the execution of transactions.

(11) *ELIGIBLE COMMERCIAL PARTICIPANT*.—The term “eligible commercial participant” means a party or entity described in paragraph (11)(A)(i), (ii), (v), or (viii) or paragraph (11)(C), who, in connection with its business—

(A) has a demonstrable capacity or ability, directly or through separate contractual arrangements, to make or take delivery of the underlying physical commodity;

(B) incurs risks, in addition to price risk, related to the commodity; or

(C) is a dealer that regularly provides hedging, risk management, or market-making services to the foregoing entities.

(12) *ELIGIBLE CONTRACT PARTICIPANT*.—The term “eligible contract participant” means—

(A) acting for its own account—

(i) a financial institution;

(ii) an insurance company regulated by a State or a foreign government (including a regulated subsidiary or affiliate of such an insurance company);

(iii) an investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an eligible contract participant);

(iv) a commodity pool that—

(I) has total assets exceeding \$5,000,000; and

(II) is formed and operated by a person subject to regulation under this Act or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract participant);

(v) a corporation, partnership, proprietorship, organization, trust, or other entity—

(I) that has total assets exceeding \$10,000,000;

(II) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by an entity described in subclause (I), in clause (i), (ii), (iii), (iv), or (vii), or in subparagraph (C); or

(III) that—

- (aa) has a net worth exceeding \$1,000,000; and
- (bb) enters into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business;
- (vi) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation—
  - (I) that has total assets exceeding \$5,000,000; or
  - (II) the investment decisions of which are made by—
    - (aa) an investment advisor or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) or this Act;
    - (bb) a foreign person performing a similar role or function subject as such to foreign regulation;
    - (cc) a financial institution; or
    - (dd) an insurance company regulated by a State or a foreign government (including a regulated subsidiary or affiliate of such an insurance company);
- (vii)(I) a governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;
- (II) a multinational or supranational government entity; or
- (III) an instrumentality, agency, or department of an entity described in subclause (I) or (II);
- (viii)(I) a broker or dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be an eligible contract participant unless the broker or dealer or foreign person also meets the requirements of clause (v) or (xi);
- (II) an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(b), 78q(h));
- (III) an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(i)));
- (ix)(I) a futures commission merchant subject to regulation under this Act or a foreign person performing

a similar role or function subject as such to foreign regulation, except that, if the futures commission merchant or foreign person is a natural person or proprietorship, the futures commission merchant or foreign person shall not be considered to be an eligible contract participant unless the futures commission merchant or foreign person also meets the requirements of clause (v) or (xi); or

(II) an affiliate of a registered futures commission merchant concerning the financial activities of which the registered person makes and keeps records under section 4f(c)(2)(B) of this Act;

(x) a floor broker or floor trader subject to regulation under this Act in connection with any transaction that takes place on or through the facilities of a registered entity or an exempt board of trade, or any affiliate thereof, on which such person regularly trades; or

(xi) a natural person with total assets exceeding \$10,000,000;

(B)(i) a person described in clause (i), (ii), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), acting as broker or performing an equivalent agency function on behalf of another person described in subparagraph (A) or (C); or

(ii) an investment adviser subject to regulation under the Investment Advisers Act of 1940, a commodity trading advisor subject to regulation under this Act, a foreign person performing a similar role or function subject as such to foreign regulation, or a person described in clause (i), (ii), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), in any such case acting as investment manager or fiduciary (but excluding a person acting as broker or performing an equivalent agency function) for another person described in subparagraph (A) or (C) and who is authorized by such person to commit such person to the transaction; or

(C) any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person;

except that entities that are eligible contract participants under clause (v), (vi), (vii)(I) or (III), or (xi) of subparagraph (A) or subparagraph (C) and own and invest on a discretionary basis less than \$50,000,000 in investments, shall only be considered eligible contract participants if the agreement, contract, or transaction is offered by, and entered into with, an entity that is listed in any of subclauses (I) through (VI) of section 2(c)(2)(B)(ii) of this Act.

(13) **EXCLUDED COMMODITY.**—The term “excluded commodity” means—

(A) an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, or index or measure of inflation;

(B) any other rate, differential, index, or measure of economic or commercial risk, return, or value that—



(i) is not within the control of any party to the relevant contract, agreement, or transaction; and

(ii) is not based in substantial part on the value of a limited number of commodities not described in subparagraph (A) that have a finite supply; or

(C) an occurrence, extent of an occurrence, or contingency associated with commercial or economic consequences beyond the control of the parties to the relevant contract, agreement, or transaction.

(14) **EXEMPT COMMODITY.**—The term “exempt commodity” means a commodity that is not an excluded commodity and is not an agricultural commodity.

(15) **FINANCIAL INSTITUTION.**—The term “financial institution” means—

(A) a corporation operating under the fifth undesignated paragraph of section 25 of the Federal Reserve Act (12 U.S.C. 603), commonly known as “an agreement corporation”;

(B) a corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.), commonly known as an “Edge Act corporation”;

(C) an institution that is regulated by the Farm Credit Administration;

(D) a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752));

(E) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

(F) a foreign bank or a branch or agency of a foreign bank (each as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101(b)));

(G) a financial holding company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841));

(H) a trust company; or

(I) a similarly regulated subsidiary or affiliate of an entity described in any of subparagraphs (A) through (H).

[(8)] (16) **FLOOR BROKER.**—The term “floor broker” means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market or derivatives transaction execution facility for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery on or subject to the rules of any contract market.

[(9)] (17) **FLOOR TRADER.**—The term “floor trader” means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person’s own account, any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

[(10)] (18) **FOREIGN FUTURES AUTHORITY.**—The term “foreign futures authority” means any foreign government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or en-

force a law, rule, or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule, or regulation as it relates to a futures or options matter.

[(11)] (19) FUTURE DELIVERY.—The term “future delivery” does not include any sale of any cash commodity for deferred shipment or delivery.

[(12)] (20) FUTURES COMMISSION MERCHANT.—The term “futures commission merchant” means an individual, association, partnership, corporation, or trust that—

(A) is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or *derivatives transaction execution facility*; and

(B) in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

(21) HYBRID INSTRUMENT.—*The term “hybrid instrument” means a deposit (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) offered by a financial institution, or a security, having 1 or more payments indexed to the value, level, or rate of 1 or more commodities.*

[(13)] (22) INTERSTATE COMMERCE.—The term “interstate commerce” means commerce—

(A) between any State, territory, or possession, or the District of Columbia, and any place outside thereof; or

(B) between points within the same state, territory, or possession, or the District of Columbia, but through any place outside thereof, or within any territory or possession, or the District of Columbia.

[(14)] (23) INTRODUCING BROKER.—The term “introducing broker” means any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant) engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or *derivatives transaction execution facility* who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

(24)(A) MARGIN.—*The term “margin”, when used with respect to a security future product, means the amount, type, and form of collateral required to secure any extension or maintenance of credit, or the amount, type, and form of collateral required as a performance bond related to the purchase, sale, or carrying of a security future product, and all other uses of collateral related to the purchasing, selling, or carrying of a security future product.*

(B) *The terms “margin level” and “level of margin”, when used with respect to a security future product, mean the amount of margin required to secure any extension or maintenance of credit, or the amount of margin required as a performance bond*

related to the purchase, sale, or carrying of a security future product.

(C) The terms “higher margin level” and “higher level of margin”, when used with respect to a security future product, mean a margin level established by a contract market that is higher than the minimum amount established by the Securities and Exchange Commission pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934.

[(15)] (25) MEMBER OF A [CONTRACT MARKET] REGISTERED ENTITY.—The term “member of a [contract market] registered entity” means an individual, association, partnership, corporation, or trust owning or holding membership in, or admitted to membership representation on, a [contract market] registered entity or given members’ trading privileges thereon. A participant in an alternative trading system that is designated as a contract market pursuant to section 5f shall be deemed a member of such contract market for purposes of transactions in security future products through such contract market.

(26) NARROW-BASED SECURITY INDEX.—The term “narrow-based security index” means an index of securities on which contracts for future delivery are not permitted under section 2(a)(1)(C) of this Act, including any interest therein or based on the value thereof.

(27) OPTION.—The term “option” means an agreement, contract, or transaction that is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”.

(28) ORGANIZED EXCHANGE.—The term “organized exchange” means a trading facility that—

(A) permits trading—

(i) by or on behalf of a person that is not an eligible contract participant; or

(ii) by persons other than on a principal-to-principal basis; or

(B) has adopted (directly or through another nongovernmental entity) rules that—

(i) govern the conduct of participants, other than rules that govern the submission of orders or execution of transactions on the trading facility; or

(ii) include disciplinary sanctions other than the exclusion of participants from trading.

[(16)] (29) PERSON.—The term “person” imports the plural or singular, and includes individuals, associations, partnerships, corporations, and trusts.

(30) REGISTERED ENTITY.—The term “registered entity” means—

(A) a board of trade designated as a contract market under section 5;

(B) a derivatives transaction execution facility registered under section 5a;

(C) a derivatives clearing organization registered under section 5b; or

(D) a board of trade designated as a contract market under section 5f.

(31) *SECURITY*.—The term “security” means a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) or section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)).

(32) *SECURITY FUTURE*.—The term “security future” means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982).

(33) *SECURITY FUTURE PRODUCT*.—The term “security future product” means a security future or any put, call, straddle, option, or privilege on any security future.

(34) *TRADING FACILITY*.—

(A) *IN GENERAL*.—The term “trading facility” means a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions by accepting bids and offers made by other participants that are open to multiple participants in the facility or system.

(B) *EXCLUSIONS*.—The term “trading facility” does not include—

(i) a person or group of persons solely because the person or group of persons—

(I) constitutes, maintains, or provides an electronic facility or system that enables participants to negotiate the terms of and enter into bilateral transactions as a result of communications exchanged by the parties and not from interaction of multiple orders within a predetermined, nondiscretionary automated trade matching algorithm; or

(II) is a derivatives clearing organization;

(ii) a government securities dealer or government securities broker, to the extent that the dealer or broker executes or trades agreements, contracts, or transactions in government securities, or assists persons in communicating about, negotiating, entering into, executing, or trading an agreement, contract, or transaction in government securities (as the terms “government securities dealer”, “government securities broker”, and “government securities” are defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); or

(iii) facilities on which bids and offers, and acceptances of bids and offers effected on the facility, are not binding.

【SEC. 2. (a)(1)(A)(i) The】

**SEC. 2. JURISDICTION OF COMMISSION; LIABILITY OF PRINCIPAL FOR ACT OF AGENT; COMMODITY FUTURES TRADING COMMISSION; TRANSACTION IN INTERSTATE COMMERCE.**

**(a) JURISDICTION OF COMMISSION; COMMODITY FUTURES TRADING COMMISSION.—**

**(1) JURISDICTION OF COMMISSION.—**

(A) *IN GENERAL.*—The Commission shall have exclusive jurisdiction, except to the extent otherwise provided in [subparagraph (B) of this paragraph] subparagraphs (C) and (D) of this paragraph and subsections (c), (d), (e), (f), (g), and (h) of this section, with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”), and transactions involving contracts of sale of a commodity for future delivery, traded or executed on a [contract market designated pursuant to section 5 of this Act] *contract market designated or derivatives transaction execution facility registered pursuant to section 5 or 5a* or any other board of trade, exchange, or market, and transactions subject to regulation by the Commission pursuant to section 19 of this Act. Except as hereinabove provided, nothing contained in this section shall (I) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the United States or of any State, or (II) restrict the Securities and Exchange Commission and such other authorities from carrying out their duties and responsibilities in accordance with such laws. Nothing in this section shall supersede or limit the jurisdiction conferred on courts of the United States or any State.

[(ii) Nothing in this Act shall be deemed to govern or in any way be applicable to transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade.

**[(iii) The]**

(B) *LIABILITY OF PRINCIPAL FOR ACT OF AGENT.*—The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

[(B)] (C) Notwithstanding any other provision of law—

(i) \* \* \*

(ii) This Act shall apply to and the Commission shall have exclusive jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”) and transactions involving, and may designate a board of trade as a contract market in, contracts of sale (or op-

tions on such contracts) for future delivery of a group or index of securities (or any interest therein or based upon the value thereof): *Provided, however,* That no board of trade shall be designated as a contract market with respect to any such contracts of sale (or options on such contracts) for future delivery unless the board of trade making such application demonstrates and the Commission expressly finds that the specific contract (or option on such contract) with respect to which the application has been made meets the following minimum requirements:

(I) Settlement of or delivery on such contract (or option on such contract) shall be effected in cash or by means other than the transfer or receipt of any security, except an exempted security under [section 3 of the Securities Act of 1933 or] section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security, as defined in section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982);

\* \* \* \* \*

(iv)(I) The Commission shall consult with the Securities and Exchange Commission with respect to any application which is submitted by a board of trade before December 9, 1982, for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery of a group or index of securities. If, no later than fifteen days following the close of the public comment period, the Securities and Exchange Commission shall object to the designation of a board of trade as a contract market in such contract (or option on such contract) on the ground that any minimum requirement of clause (ii) of this subparagraph is not met, the Commission shall afford the Securities and Exchange Commission an opportunity for an oral hearing, to be transcribed, before the Commission, and shall give appropriate weight to the views of the Securities and Exchange Commission. Such oral hearing shall be held after the public comment period, prior to Commission action upon such designation, and not less than thirty nor more than forty-five days after the close of the public comment period, unless both the Commission and the Securities and Exchange Commission otherwise agree. If such an oral hearing is held, the Securities and Exchange Commission fails to withdraw its objections, and the Commission issues an order designating a board of trade as a contract market with respect to any such contract (or option on such contract), the Securities and Exchange Commission shall have the right of judicial review of such order in accordance with the standards of section 6(c) of this Act. If, pursuant to section 6 of this Act, there is a hearing on the record with re-

spect to such application for designation, the Securities and Exchange Commission shall have the right to participate in that hearing as an interested party.

[(II)] Effective for any application submitted by a board of trade on or after December 9, 1982, for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery of a group or index of securities, the Commission shall transmit a copy of such application to the Securities and Exchange Commission for review. The Commission shall not approve any such application if the Securities and Exchange Commission determines that such contract (or option on such contract) fails to meet the minimum requirements set forth in clause (ii) of this subparagraph. Such determination shall be made by order no later than forty-five days after the close of the public comment period under clause (iii) of this subparagraph. In the event of such determination, the board of trade shall be afforded an opportunity for a hearing on the record before the Securities and Exchange Commission. If a board of trade requests a hearing on the record, the hearing shall commence no later than thirty days following the receipt of the request, and a final determination shall be made no later than thirty days after the close of the hearing. A person aggrieved by any such order of the Securities and Exchange Commission may obtain judicial review thereof in the same manner and under such terms and conditions as are provided in section 6(b) of this Act.

(v) No person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under [section 3 of the Securities Act of 1933 or] section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), or except as provided in clause (ii) of this subparagraph *or subparagraph (D)*, any group or index of such securities or any interest therein or based on the value thereof.

[(vi)(I) Notwithstanding any other provision of this Act, any contract market in a stock index futures contract (or option thereon) shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin (initial and maintenance) for the stock index futures contract (or option thereon).

[(II) The Board may at any time request any contract market to set the margin for any stock index futures contract (or option thereon) at such levels as the Board in its judgment determines are appropriate to preserve the financial integrity of the contract market or its clearing system or to prevent systemic risk. If the contract market

fails to do so within the time specified by the Board in its request, the Board may direct the contract market to alter or supplement the rules of the contract market as specified in the request.

[(III) Subject to such conditions as the Board may determine, the Board may delegate any or all of its authority under this clause only to the Commission.

[(IV) Nothing in this clause shall supersede or limit the authority granted to the Commission in section 8a(9) to direct a contract market, on finding an emergency to exist, to raise temporary emergency margin levels on any futures contract or option on the contract covered by this clause.]

*(vi)(I) Notwithstanding any other provision of this Act, any contract market in a stock index futures contract (or option thereon), other than a security future product, shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin (initial and maintenance) for such stock index futures contract (or option thereon), other than security future products.*

*(II) The Board may at any time request any contract market to set the margin for any stock index futures contract (or option thereon), other than for any security future product, at such levels as the Board in its judgment determines are appropriate to preserve the financial integrity of the contract market or its clearing system or to prevent systemic risk. If the contract market fails to do so within the time specified by the Board in its request, the Board may direct the contract market to alter or supplement the rules of the contract market as specified in the request.*

*(III) Subject to such conditions as the Board may determine, the Board may delegate any or all of its authority, relating to margin for any stock index futures contract (or option thereon), other than security future products, under this clause to the Commission.*

*(IV) MARGIN REGULATIONS.—It shall be unlawful for any futures commission merchant to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on any security future product unless such activities comply with the rules and regulations which the Securities and Exchange Commission, after consultation with the Commission, shall prescribe pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934.*

*(V) Nothing in this clause shall supersede or limit the authority granted to the Commission in section 8a(9) to direct a contract market, on finding an emergency to exist, to raise temporary margin levels on any futures contract, or option on the contract covered by this clause, or on any security future product.*

[(V)] (VI) Any action taken by the Board, or by the Commission acting under the delegation of authority under subclause III, under this clause directing a contract market to alter or supplement a contract market



rule shall be subject to review only in the Court of Appeals where the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. The review shall be based on the examination of all information before the Board or the Commission, as the case may be, at the time the determination was made. The court reviewing the action of the Board or the Commission shall not enter a stay or order of mandamus unless the court has determined, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

*(D)(i) Notwithstanding any other provision of this Act, the Securities and Exchange Commission shall have jurisdiction and authority over security futures as defined in section 3(a)(55) of the Securities Exchange Act of 1934, section 2(a)(16) of the Securities Act of 1933, section 2(a)(52) of the Investment Company Act of 1940, and section 202(a)(27) of the Investment Advisers Act of 1940, options on security futures, and persons effecting transactions in security futures and options thereon, and this Act shall apply to and the Commission shall have jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty") and transactions involving, and may designate a board of trade as a contract market in, a security future product as defined in section 1a(33) of this Act: Provided, however, That, except as provided in clause (v) of this subparagraph, no board of trade shall be designated as a contract market with respect to any such contracts of sale for future delivery unless the board of trade making such application demonstrates and the Commission expressly finds that the specific contract with respect to which the application has been made, or the board of trade, meets the following criteria:*

*(I) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (vi) of this subparagraph, any security underlying the security future, including each component security of a contract of sale for future delivery on a narrow-based security index, is registered pursuant to section 12 of the Securities Exchange Act of 1934.*

*(II) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (vi) of this subparagraph, the security future product is cash settled.*

*(III) The security future product is not traded on an exempt board of trade or a designated transaction execution facility.*

*(IV) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (vi) of this subparagraph, the security future is based upon common stock and such other equity securities as the Commis-*

sion and the Securities and Exchange Commission jointly determine appropriate.

(V) The security future product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security future products, which permits the security future product to be purchased on a designated contract market, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934, or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 and offset on any other designated contract market, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934, or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 on which the security future product is traded.

(VI) Only futures commission merchants, introducing brokers, commodity trading advisers, commodity pool operators or associated persons subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 solicit, accept any order for, or otherwise deal in any transaction in or in connection with a security future product.

(VII) The security future product is subject to a prohibition against dual trading in section 4j of this Act and the rules and regulations thereunder or the provisions of section 11(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, except to the extent otherwise permitted under the Securities Exchange Act of 1934 and the rules and regulations thereunder.

(VIII) Trading in the security future product is not readily susceptible to manipulation of the price of such security future product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities.

(IX) The board of trade on which the security future product is traded has procedures in place for coordinated surveillance among such board of trade, any market on which any security underlying the security future product is traded, and other markets on which any related security is traded to detect manipulation and insider trading, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has in place such procedures.

(X) The board of trade on which the security future product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subclause (IX), except that, if the board of

*trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has rules to require such audit trails.*

*(XI) The board of trade on which the security future product is traded has in place procedures to coordinate trading halts between such board of trade and any market on which any security underlying the security future product is traded and other markets on which any related security is traded, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has rules to require such coordinated trading halts.*

*(XII) The margin requirements for a security future product are consistent with the margin requirements for comparable option contracts traded on an exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 and initial and maintenance margin levels for a security future product are not lower than the levels of margin required for comparable option contracts traded on an exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934, except that nothing in this subclause shall be construed to prevent a board of trade from requiring higher margin levels for a security future product when it deems such action to be necessary or appropriate.*

*(ii) It shall be unlawful for any person to offer, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a security future product unless—*

*(I) such transaction is conducted on or subject to the rules of a board of trade which has been designated by the Commission as a contract market in such security future product;*

*(II) such security future product is executed or consummated by, through, or with a member of such contract market; and*

*(III) such security future product is evidenced by a record in writing which shows the date, the parties to such security future product and their addresses, the property covered and its price: Provided, That each contract market member shall keep such record for a period of 3 years from the date thereof, or for a longer period if the Commission so directs, which record shall at all times be open to the inspection of any representative of the Commission, the Securities and Exchange Commission, or the Department of Justice.*

*(iii)(I) Except as provided in subclause (II) but notwithstanding any other provision of this Act, no person shall*

offer to enter into, enter into, or confirm the execution of any option on a security future.

(II) After 3 years after the date of enactment of the Commodity Futures Modernization Act of 2000, the Commission and the Securities and Exchange Commission may by order jointly determine to permit trading of options on any security future authorized to be traded under the provisions of this Act and the Securities Exchange Act of 1934. Before any such determination, the Commission and the Securities and Exchange Commission shall conduct a study of the effect of the trading of security futures on the markets for futures contracts, securities, and options and the adequacy of protections for investors and other market participants.

(iv)(I) All records of a futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), a floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), an associated person exempt from registration pursuant to section 4k(6), or a board of trade designated as a contract market in a security future product pursuant to section 5f shall be subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title: Provided, That the Commission, prior to conducting any such examination, gives notice to the Securities and Exchange Commission of such proposed examination and consults with the Securities and Exchange Commission concerning the feasibility and desirability of coordinating such examination with examinations conducted by the Securities and Exchange Commission with a view to avoiding unnecessary regulatory duplication or undue regulatory burdens for such registrant or board of trade.

(II) The Commission shall notify the Securities and Exchange Commission of any examination conducted of any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to section 4k(6), or board of trade designated as a contract market in a security future product pursuant to section 5f, and, upon request, furnish to the Securities and Exchange Commission any examination report and data supplied to the Commission in connection with such examination.

(III) The Commission shall, to the fullest extent possible, use the reports of examinations of any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to section 4k(6), or board of trade designated as a contract market in a security future product pursuant to section 5f, made by the Securities and Exchange Commission, a national securities association registered pursuant to section 15A(a) of the Securities

*Exchange Act of 1934 (15 U.S.C. 78o-3), or a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)).*

*(IV) Nothing in this subsection shall be construed to impair or limit (other than by the requirement of prior consultation) the power of the Commission under this subsection to examine any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to section 4k(6), or board of trade designated as a contract market in a security future product pursuant to section 5f, or to affect in any way the power of the Commission under any other provision of this Act.*

*(v) A board of trade designated as a contract market pursuant to section 5f shall be designated as a contract market with respect to a security future product by providing to the Commission a written certification that the specific contract with respect to which the application has been made, or the board of trade, meets the criteria specified in subclauses (I) through (XII) of clause (i).*

*(vi) The Commission and the Securities and Exchange Commission, by rule, regulation, or order, may jointly modify the criteria specified in subclause (I), (II), or (IV) of clause (i) of this subparagraph to the extent such modification fosters the development of fair and orderly markets in security future products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.*

\* \* \* \* \*

(7) No Commissioner or employee of the Commission shall accept employment or compensation from any person, exchange, or clearinghouse subject to regulation by the Commission under this Act during his term of office, nor shall he participate, directly or indirectly, in any **contract market** *registered entity* operations or transactions of a character subject to regulation by the Commission.

(8)(A) \* \* \*

(B)(i) The Commission shall maintain communications with the Department of the Treasury, the Board of Governors of the Federal Reserve System, and the Securities and Exchange Commission for the purpose of keeping such agencies fully informed of Commission activities that relate to the responsibilities of those agencies, for the purpose of seeking the views of those agencies on such activities, and for considering the relationships between the volume and nature of investment and trading in contracts of sale of a commodity for future delivery and in securities and financial instruments under the jurisdiction of such agencies.

(ii) When a board of trade applies for **designation as a contract market** *designation or registration as a contract market or derivatives transaction execution facility* involving transactions for future delivery of any security issued or guaranteed by the United States or any agency thereof, the Commission shall promptly deliver a copy of such application to the Depart-

ment of the Treasury and the Board of Governors of the Federal Reserve System. The Commission may not **【designate a board of trade as a contract market】** *designate or register a board of trade as a contract market or derivatives transaction execution facility* based on such application until forty-five days after the date the Commission delivers the application to such agencies or until the Commission receives comments from each of such agencies on the application, whichever period is shorter. Any comments received by the Commission from such agencies shall be included as part of the public record of the Commission's designation proceeding. In **【designating, or refusing, suspending, or revoking the designation of, a board of trade as a contract market involving transactions for future delivery referred to in this clause or in considering possible emergency action under section 8a(9) of this Act】** *designating, registering, or refusing, suspending, or revoking the designation or registration of, a board of trade as a contract market or derivatives transaction execution facility involving transactions for future delivery referred to in this clause or in considering any possible action under this Act (including without limitation emergency action under section 8a(9))* with respect to such transactions, the Commission shall take into consideration all comments it receives from the Department of the Treasury and the Board of Governors of the Federal Reserve System and shall consider the effect that any such **【designation, suspension, revocation, or emergency action】** *designation, registration, suspension, revocation, or action* may have on the debt financing requirements of the United States Government and the continued efficiency and integrity of the underlying market for government securities.

(iii) The provisions of this subparagraph shall not create any

\* \* \* \* \*

(c) **AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN FOREIGN CURRENCY, GOVERNMENT SECURITIES, AND CERTAIN OTHER COMMODITIES.**—

(1) **IN GENERAL.**—*Except as provided in paragraph (2), nothing in this Act (other than section 5b or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in—*

- (A) *foreign currency;*
- (B) *government securities;*
- (C) *security warrants;*
- (D) *security rights;*
- (E) *resales of installment loan contracts;*
- (F) *repurchase agreements in an excluded commodity; or*
- (G) *mortgages or mortgage purchase commitments.*

(2) **COMMISSION JURISDICTION.**—

(A) **AGREEMENTS, CONTRACTS, AND TRANSACTIONS THAT ARE FUTURES TRADED ON AN ORGANIZED EXCHANGE.**—*This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction described in paragraph (1) that is—*

- (i) *a contract of sale of a commodity for future delivery (or an option thereon), or an option on a commodity (other than foreign currency or a security or group or*

*index of securities), that is executed or traded on an organized exchange; or*

*(ii) an option on foreign currency and is executed or traded on an organized exchange that is not a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934.*

**(B) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN RETAIL FOREIGN CURRENCY.**—*This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction in foreign currency that—*

*(i) is a contract of sale for future delivery (or an option on such a contract) or an option; and*

*(ii) is offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is—*

*(I) a financial institution;*

*(II) a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o–5) or a futures commission merchant registered under this Act;*

*(III) an associated person of a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o–5), or an affiliated person of a futures commission merchant registered under this Act, concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(b), 78q(h)) or section 4f(c)(2)(B) of this Act;*

*(IV) an insurance company that is subject to State regulation (including a subsidiary or affiliate of such an insurance company);*

*(V) a financial holding company (as defined in section 2 of the Bank Holding Company Act of 1956); or*

*(VI) an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934).*

**(d) EXCLUDED DERIVATIVE TRANSACTIONS.**—

**(1) IN GENERAL.**—*Nothing in this Act (other than section 5b or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in an excluded commodity if—*

*(A) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants at the time at which the persons enter into the agreement, contract, or transaction; and*

*(B) the agreement, contract, or transaction is not executed or traded on a trading facility.*

**(2) ELECTRONIC TRADING FACILITY EXCLUSION.**—*Nothing in this Act (other than section 5a, 5b, or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in an excluded commodity if—*

(A) the agreement, contract, or transaction is entered into on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(12)(B)(ii) of this Act;

(B) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants (as defined in sections 1a(12)(A), (B)(ii), and (C)) at the time at which the persons enter into the agreement, contract, or transaction; and

(C) the agreement, contract, or transaction is executed or traded on an electronic trading facility.

(e) *EXCLUDED ELECTRONIC TRADING FACILITIES.*—

(1) *IN GENERAL.*—Nothing in this Act (other than section 12(e)(2)(B)) governs or is applicable to an electronic trading facility that limits transactions authorized to be conducted on its facilities to those satisfying the requirements of sections 2(d)(2) and 2(h)(3) of this Act.

(2) *EFFECT ON AUTHORITY TO ESTABLISH AND OPERATE.*—Nothing in this Act shall prohibit a board of trade designated by the Commission as a contract market or derivatives transaction execution facility, or an exempt board of trade, from establishing and operating an excluded electronic trading facility excluded under this Act pursuant to paragraph (1).

(f) *EXCLUSION FOR QUALIFYING HYBRID INSTRUMENTS.*—

(1) *IN GENERAL.*—Nothing in this Act (other than section 12(e)(2)(B)) governs or is applicable to a hybrid instrument that is predominantly a security or depository instrument.

(2) *PREDOMINANCE.*—A hybrid instrument shall be considered to be predominantly a security or depository instrument if—

(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with delivery of the hybrid instrument;

(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(D) the hybrid instrument is not marketed as a contract of sale for future delivery of a commodity (or option on such a contract) subject to this Act.

(3) *MARK-TO-MARKET MARGINING REQUIREMENTS.*—For the purposes of paragraph (2)(C), mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

(g) Nothing in subsection (a)(1)(C) or (a)(1)(D) governs or applies to—



(1) *an agreement, contract, or transaction that is excluded under subsection (c) or (d) (whether or not the agreement, contract, or transaction is otherwise subject to this Act);*

(2) *an electronic trading facility that is excluded under subsection (e); or*

(3) *a hybrid instrument that is covered by an exclusion under subsection (f) or an exemption granted by the Commission under section 4(c) (whether or not the hybrid instrument is otherwise subject to this Act).*

(h) **LEGAL CERTAINTY FOR CERTAIN TRANSACTIONS IN EXEMPT COMMODITIES.**—

(1) *Except as provided in paragraph (2) of this subsection, nothing in this Act shall apply to a contract, agreement or transaction in an exempt commodity which—*

(A) *is entered into solely between persons that are eligible contract participants at the time they enter into the agreement, contract, or transaction; and*

(B) *is not entered into on a trading facility.*

(2) *An agreement, contract, or transaction described in paragraph (1) of this subsection shall be subject to—*

(A) *sections 5b and 12(e)(2)(B) of this Act;*

(B) *sections 4b and 4o of this Act and the regulations of the Commission pursuant to section 4c(b) of this Act prescribing fraud in connection with commodity option transactions, to the extent such agreement, contract, or transaction is not between eligible commercial participants and would otherwise be subject to those provisions; and*

(C) *sections 6(c) and 9(a)(2) of this Act to the extent they prohibit manipulation of the market price of any commodity in interstate commerce, to the extent such agreement, contract, or transaction would otherwise be subject to those provisions.*

(3) *Except as provided in paragraph (4) of this subsection, nothing in this Act shall apply to an agreement, contract, or transaction in an exempt commodity which—*

(A) *is entered into on a principal-to-principal basis solely between persons that are eligible contract participants at the time at which the persons enter into the agreement, contract, or transaction;*

(B) *entered into only between persons that are eligible contract participants (as defined in sections 1a(12)(A), (B)(ii), (B)(iii), and (C) at the time at which the persons enter into the agreement, contract, or transaction; and*

(C) *is executed or traded on an electronic trading facility.*

(4) *An agreement, contract, or transaction described in paragraph (3) shall be subject to—*

(A) *sections 5a (to the extent so provided in section 5a(g)), 5b, and 12(e)(2)(B) of this Act;*

(B) *sections 4b and 4o of this Act and the regulations of the Commission pursuant to section 4c(b) of this Act prescribing fraud in connection with commodity option transactions to the extent such agreement, contract, or transaction would otherwise be subject to those provisions;*

(C) *sections 6(c) and 9(a)(2) of this Act, to the extent they prohibit manipulation of the market price of any com-*

*modity in interstate commerce and to the extent such agreement, contract, or transaction would otherwise be subject to those provisions; and*

*(D) such rules and regulations as the Commission may prescribe if necessary to ensure timely dissemination by the electronic trading facility of price, trading volume, and other trading data to the extent appropriate, if the Commission determines that the electronic trading facility performs a significant price discovery function for transactions in the cash market for the commodity underlying any agreement, contract, or transaction executed or traded on the electronic trading facility.*

*(i) APPLICATION OF THE ACT.—Nothing in this Act shall be construed (1) as implying or creating any presumption that (A) any agreement, contract, or transaction that is eligible for an exclusion or exemption from regulation under this Act or (B) any agreement, contract, or transaction that is not eligible for an exclusion or exemption from regulation under this Act is or would otherwise be subject to this Act or (2) as conferring jurisdiction on the Commission with respect to any such agreement, contract, or transaction, except as expressly provided in section 5a (to the extent so provided in section 5a(g)) and 5b.*

**[SEC. 3. Transactions in commodities involving the sale thereof for future delivery as commonly conducted on boards of trade and known as “futures” are affected with a national public interest. Such futures transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling commodities and the products and byproducts thereof in interstate commerce. The prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of commodities and the products and byproducts thereof and to facilitate the movements thereof in interstate commerce. Such transactions are utilized by shippers, dealers, millers, and others engaged in handling commodities and the products and byproducts thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price. The transactions and prices of commodities on such boards of trade are susceptible to excessive speculation and can be manipulated, controlled, cornered or squeezed, to the detriment of the producer or the consumer and the persons handling commodities and the products and byproducts thereof in interstate commerce, rendering regulation imperative for the protection of such commerce and the national public interest therein. Furthermore, transactions which are of the character of, or are commonly known to the trade as, “options” are or may be utilized by commercial and other entities for risk shifting and other purposes. Options transactions are in interstate commerce or affect such commerce and the national economy, rendering regulation of such transactions imperative for the protection of such commerce and the national public interest.]**

**SEC. 3. FINDINGS AND PURPOSE.**

*(a) FINDINGS.—The futures contracts and options contracts that are subject to this Act are entered into regularly in interstate and international commerce and are affected with a national public in-*

terest by providing a means for managing and assuming price risks, discovering prices, and disseminating pricing information through trading in liquid, fair and financially secure trading facilities.

(b) *PURPOSE.*—It is the purpose of this Act to serve the public interests described in subsection (a) through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission. To foster these public interests, it is further the purpose of this Act to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this Act and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants.

SEC. 4. (a) Unless exempted by the Commission pursuant to subsection (c), it shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions) unless—

(1) such transaction is conducted on or subject to the rules of a board of trade which has been [designated by the Commission as a “contract market” for] *designated or registered by the Commission as a contract market or derivatives transaction execution facility* for such commodity;

(2) such contract is executed or consummated by or through a [member of such] contract market; and

(3) such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: *Provided*, That each contract market or derivatives transaction execution facility member shall keep such record for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, which record shall at all times be open to the inspection of any representative of the Commission or the Department of Justice.

\* \* \* \* \*

(c)(1) In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade [designated as a contract market] *designated or registered as a contract market or derivatives transaction execution facility* for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or pro-

spectively, or both, from any of the requirements of subsection (a), or from any other provision of this Act (except **section 2(a)(1)(B)]** *sections 2(a)(1)(C) and 2(a)(1)(D)*), if the Commission determines that the exemption would be consistent with the public interest.

(2) The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) unless the Commission determines that—

(A) the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and

(B) the agreement, contract, or transaction—

(i) will be entered into solely between appropriate persons; and

(ii) will not have a material adverse effect on the ability of the Commission or any contract market *or derivatives transaction execution facility* to discharge its regulatory or self-regulatory duties under this Act.

\* \* \* \* \*

SEC. 4a. (a) Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets *or derivatives transaction execution facilities* causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such burden, the Commission shall, from time to time, after due notice and opportunity for hearing, by rule, regulation, or order, proclaim and fix such limits on the amounts of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market *or derivatives transaction execution facility* as the Commission finds are necessary to diminish, eliminate, or prevent such burden. In determining whether any person has exceeded such limits, the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person; and further, such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person. Nothing in this section shall be construed to prohibit the Commission from fixing different trading or position limits for different commodities, markets, futures, or delivery months, or for different number of days remaining until the last day of trading in a contract, or different trading limits for buying and selling operations, or different limits for the purposes of paragraphs (1) and (2) of subsection (b) of this section, or from exempting transactions normally known to the trade as “spreads” or “straddles” or “arbitrage” or from fixing limits applying to such transactions or positions different from limits fixed for other transactions or positions. The word “arbitrage” in domestic markets shall be defined to mean the same as a “spread” or “straddle”. The Commission is authorized to define the term “international arbitrage”.

(b) The Commission shall, in such rule, regulation, or order, fix a reasonable time (not to exceed ten days) after the promulgation of the rule, regulation, or order; after which, and until such rule, regulation, or order is suspended, modified, or revoked, it shall be unlawful for any person—

(1) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of the contract market or markets, *or derivatives transaction execution facility or facilities*, to which the rule, regulation, or order applies, any amount of such commodity during any one business day in excess of any trading limit fixed for one business day by the Commission in such rule, regulation, or order for or with respect to such commodity; or

(2) directly or indirectly to hold or control a net long or a net short position in any commodity for future delivery on or subject to the rules of any contract market *or derivatives transaction execution facility* in excess of any position limit fixed by the Commission for or with respect to such commodity: *Provided*, That such position limit shall not apply to a position acquired in good faith prior to the effective date of such rule, regulation, or order.

\* \* \* \* \*

(e) Nothing in this section shall prohibit or impair the adoption by any **[contract market or]** *contract market, derivatives transaction execution facility*, or by any other board of trade **[licensed or designated]** *licensed, designated, or registered* by the Commission of any bylaw, rule, regulation, or resolution fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery traded on or subject to the rules of such **[contract market, or]** *contract market or derivatives transaction execution facility*, or under options on such contracts or commodities traded on or subject to the rules of such **[contract market or]** *contract market, derivatives transaction execution facility*, or such board of trade: *Provided*, That if the Commission shall have fixed limits under this section for any contract or under section 4c of this Act for any commodity option, then the limits fixed by the bylaws, rules, regulations, and resolutions adopted by such **[contract market or]** *contract market, derivatives transaction execution facility*, or other board of trade **[licensed or designated]** *licensed, designated, or registered* by the Commission fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery or under options on such contracts or commodities, if such bylaw, rule, regulation, or resolution has been approved by the Commission: *Provided*, That the provisions of section 9(c) of this Act shall apply only to those who knowingly violate such limits.

SEC. 4b. (a) It shall be unlawful (1) for any member of a **[contract market]** *registered entity*, or for any correspondent, agent, or employee of any member, in or in connection with any order to

make, or the making of, any contract of sale of any commodity in interstate commerce, made, or to be made, on or subject to the rules of any **contract market** *registered entity*, for or on behalf of any other person, or (2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (B) determining the price basis of any transaction in interstate commerce in such commodity, or (C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

(i) \* \* \*

\* \* \* \* \*

**[SEC. 4c. (a)** It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of, any transaction involving any commodity, which is or may be used for (1) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (2) determining the price basis of any such transaction in interstate commerce in such commodity, or (3) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

**[(A)** if such transaction is, is of the character of, or is commonly known to the trade as, a “wash sale”, “cross trade”, or “accommodation trade”, or is a fictitious sale; or

**[(B)** if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.

Nothing in this section shall be construed to prevent the exchange of futures in connection with cash commodity transactions or of futures for cash commodities, or of transfer trades or office trades if made in accordance with board of trade rules applying to such transactions and such rules shall have been approved by the Commission.]

**SEC. 4c. PROHIBITED TRANSACTIONS.**

(a) *IN GENERAL.*—

(1) *PROHIBITION.*—*It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction described in paragraph (2) involving any commodity if the transaction is used or may be used to—*

*(A) hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity;*

*(B) determine the price basis of any such transaction in interstate commerce in the commodity; or*

*(C) deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.*

(2) *TRANSACTION.*—*A transaction referred to in paragraph (1) is a transaction that—*

*(A)(i) is, is of the character of, or is commonly known to the trade as, a “wash sale” or “accommodation trade”; or*

*(ii) is a fictitious sale; or*

*(B) is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price.*

\* \* \* \* \*

(g) The Commission shall adopt rules requiring that a contemporaneous written record be made, as practicable, of all orders for execution on the floor or subject to the rules of each contract market *or derivatives transaction execution facility* placed by a member of the contract market who is present on the floor at the time such order is placed.

SEC. 4d. It shall be unlawful for any person to engage as futures commission merchant or introducing broker in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market *or derivatives transaction execution facility* unless—

(1) such person shall have registered, under this Act, with the Commission as such futures commission merchant or introducing broker and such registration shall not have expired nor been suspended nor revoked; and

(2) such person shall, if a futures commission merchant, whether a member or nonmember of a contract market *or derivatives transaction execution facility*, treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held: *Provided, however,* That such money, securities, and property of the customers of such futures commission merchant may, for convenience, be commingled and deposited in the same account or accounts with any bank or trust company or with the clearing house organization of such contract market *or derivatives transaction execution facility*, and that such share thereof as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle the contracts or trades of such customers, or resulting market positions, with the clearing-house organization of such contract market *or derivatives transaction execution facility* or with any member of such contract market *or derivatives transaction execution facility*, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with such contracts and trades: *Provided further,* That in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, such money, securities, and property of the customers of such futures commission merchant may be commingled and deposited as provided in this section with any other money, securities, and property received by such futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the cus-

tomers of such futures commission merchant: *Provided further*, That such money may be invested in obligations of the United States, in general obligations of any State or of any political subdivision thereof, and in obligations fully guaranteed as to principal and interest by the United States, such investments to be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

It shall be unlawful for any person, including but not limited to any clearing agency of a contract market or *derivatives transaction execution facility* and any depository, that has received any money, securities, or property for deposit in a separate account as provided in paragraph (2) of this section, to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the customers of such futures commission merchant.

SEC. 4e. It shall be unlawful for any person to act as floor trader in executing purchases and sales, or as floor broker in executing any orders for the purchase or sale, of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or *derivatives transaction execution facility* unless such person shall have registered, under this Act, with the Commission as such floor trader or floor broker and such registration shall not have expired nor been suspended nor revoked.

SEC. 4f. (a)(1) Any person desiring to register as a futures commission merchant, introducing broker, floor broker, or floor trader hereunder shall be registered upon application to the Commission. The application shall be made in such form and manner as prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged, including in the case of an application of a futures commission merchant or an introducing broker, the names and addresses of the managers of all branch offices, and the names of such officers and partners, if a partnership, and of such officers, directors, and stockholders, if a corporation, as the Commission may direct. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission the above-mentioned information and such other information pertaining to such person's business as the Commission may require. Each registration shall expire on December 31 of the year for which issued or at such other time, not less than one year from the date of issuance, as the Commission may by rule, regulation, or order prescribe, and shall be renewed upon application therefor unless the registration has been suspended (and the period of such suspension has not expired) or revoked pursuant to the provisions of this Act.

(2) *Notwithstanding paragraph (1), and except as provided in paragraph (3), any broker or dealer that is registered with the Securities and Exchange Commission shall be registered as a futures commission merchant or introducing broker as applicable, if—*

(A) *such broker or dealer limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market to security future products;*



(B) such broker or dealer files written notice with the Commission in such form as the Commission, by rule, may prescribe containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors;

(C) the registration of such broker or dealer is not suspended pursuant to an order of the Securities and Exchange Commission; and

(D) such broker or dealer is a member of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.

Such registration shall be effective immediately upon filing of the written notice with the Commission.

(3) A floor broker or floor trader shall be exempt from the registration requirements of section 4e and paragraph (1) of this subsection if—

(A) such floor broker or floor trader is a broker or dealer registered with the Securities and Exchange Commission;

(B) such floor broker or floor trader limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market to security future products; and

(C) the registration of such floor broker or floor trader is not suspended pursuant to an order of the Securities and Exchange Commission.

(4)(A) A broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2), or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3), shall be exempt from the following provisions of this Act and the rules thereunder:

(i) Subsections (b), (d), (e), and (g) of section 4c.

(ii) Sections 4d, 4e, and 4h.

(iii) Subsections (b) and (c) of this section.

(iv) Subsections (b) and (c) of section 4j.

(v) Section 4k(1).

(vi) Section 4p.

(vii) Section 6d.

(viii) Subsections (d) and (g) of section 8.

(ix) Section 16.

(x) Section 22(a).

(B)(i) Except as provided in clause (ii), but notwithstanding any other provision of this Act, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any broker or dealer subject to the registration requirement of paragraph (2) of this subsection, or exempt from registration pursuant to paragraph (3) of this subsection, from any provision of this Act or of any rule or regulation thereunder, to the extent such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.

(ii) The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section shall be granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

(C)(i) A broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2) or an associated person thereof, or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3), shall not be required to become a member of any futures association registered under section 17 of this Act.

(ii) No futures association registered under section 17 of this Act shall limit its members from carrying an account, accepting an order, or transacting business with a broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2) or an associated person thereof, or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3).

(b) Notwithstanding any other provisions of this Act, no person desiring to register as futures commission merchant or as introducing broker shall be so registered unless he meets such minimum financial requirements as the Commission may by regulation prescribe as necessary to insure his meeting his obligations as a registrant, and each person so registered shall at all times continue to meet such prescribed minimum financial requirements: *Provided*, That such minimum financial requirements will be considered met if the applicant for registration or registrant is a member of a contract market or derivatives transaction execution facility and conforms to minimum financial standards and related reporting requirements set by such contract market in its bylaws, rules, regulations, or resolutions and approved by the Commission as adequate to effectuate the purposes of this subsection.

(c)(1) As used in this subsection:

(i) \* \* \*

\* \* \* \* \*

(3)(A) \* \* \*

(B) The Commission, in requiring reports pursuant to this paragraph, shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the Commission or to a contract market or derivatives transaction execution facility or other self-regulatory organization with primary responsibility for examining the registered futures commission merchant's financial and operational condition.

\* \* \* \* \*

SEC. 4g. (a) \* \* \*

(b) Every **clearinghouse and contract market** registered entity shall maintain daily trading records. The daily trading records shall include such information as the Commission shall prescribe by rule.

\* \* \* \* \*

(f) Nothing contained in this section shall be construed to prohibit the Commission from making separate determinations for different **clearinghouses, contract markets, and exchanges** registered entities when such determinations are warranted in the judgment of the Commission.

SEC. 4h. It shall be unlawful for any person falsely to represent such person to be a member of a **contract market** registered enti-

ty or the representative or agent of such member, or to be a registrant under this Act or the representative or agent of any registrant, in soliciting or handling any order or contract for the purchase or sale of any commodity in interstate commerce or for future delivery, or falsely to represent in connection with the handling of any such order or contract that the same is to be or has been executed on, or by or through a member of, any **contract market** *registered entity*.

SEC. 4i. It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market *or derivatives transaction execution facility*—

(1) \* \* \*

\* \* \* \* \*

SEC. 4j. (a)(1) The Commission shall issue regulations to prohibit the privilege of dual trading on each contract market *for security future products* which has not been exempted from such regulations under paragraph (3). The regulations issued by the Commission under this paragraph—

(A) \* \* \*

\* \* \* \* \*

(3) The Commission shall exempt a contract market, *other than a designated contract market in a security future product*, from the regulations issued under paragraph (1), either unconditionally or on stated conditions (including stated periods of time) relevant to the attainment or maintenance of compliance with the standards in subparagraphs (A) and (B), upon finding that—

(A) the trade monitoring system in place at the contract market satisfies the requirements of **section 5a(b)** *section 5* with regard to violations attributable to dual trading at such contract market; or

\* \* \* \* \*

(6) Violation of an order issued under this subsection shall be considered a violation of an order of the Commission for purposes of—

(i) establishing liability and assessing penalties against a contract market or any director, officer, agent, or employee thereof under section 6b or 6c; or

(ii) initiating proceedings under **section 5b** *section 5e* or 6(a).

\* \* \* \* \*

SEC. 4k. (1) \* \* \*

\* \* \* \* \*

(6) *Any associated person of a broker or dealer that is registered with the Securities and Exchange Commission, and who limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market to security future products, shall be exempt from the following provisions of this Act and the rules thereunder:*

(A) *Subsections (b), (d), (e), and (g) of section 4c.*

(B) *Sections 4d, 4e, and 4h.*

- (C) Subsections (b) and (c) of section 4f.
- (D) Subsections (b) and (c) of section 4j.
- (E) Paragraph (1) of this section.
- (F) Section 4p.
- (G) Section 6d.
- (H) Subsections (d) and (g) of section 8.
- (I) Section 16.
- (J) Section 22(a).

SEC. 4l. It is hereby found that the activities of commodity trading advisors and commodity pool operators are affected with a national public interest in that, among other things—

(1) their advice, counsel, publications, writings, analyses, and reports are furnished and distributed, and their contracts, solicitations, subscriptions, agreements, and other arrangements with clients take place and are negotiated and performed by the use of the mails and other means and instrumentalities of interstate commerce;

(2) their advice, counsel, publications, writings, analyses, and reports customarily relate to and their operations are directed toward and cause the purchase and sale of commodities for future delivery on or subject to the rules of contract markets or *derivatives transaction execution facilities*; and

(3) the foregoing transactions occur in such volume as to affect substantially transactions on contract markets or *derivatives transaction execution facilities*.

SEC. 4m. (1) \* \* \*

\* \* \* \* \*

(3) *The provisions of subsection (1) of this section shall not apply to any commodity trading advisor that is registered with the Securities and Exchange Commission as an investment adviser whose business does not consist primarily of acting as a commodity trading advisor, as defined in section 1a of this Act, and that does not act as a commodity trading advisor to any investment trust, syndicate, or similar form of enterprise that is engaged primarily in trading in any commodity for future delivery on or subject to the rules of any contract market.*

\* \* \* \* \*

SEC. 4p. (a) The Commission may specify by rules and regulations appropriate standards with respect to training, experience, and such other qualifications as the Commission finds necessary or desirable to insure the fitness of persons required to be registered with the Commission. In connection therewith, the Commission may prescribe by rules and regulations the adoption of written proficiency examinations to be given to applicants for registration and the establishment of reasonable fees to be charged to such applicants to cover the administration of such examinations. The Commission may further prescribe by rules and regulations that, in lieu of examinations administered by the Commission, futures associations registered under section 17 of this [Act or contract markets] Act, contract markets, or *derivatives transaction execution facilities* may adopt written proficiency examinations to be given to applicants for registration and charge reasonable fees to such applicants to cover the administration of such examinations. Notwithstanding any other provision of this section, the Commission may specify by

rules and regulations such terms and conditions as it deems appropriate to protect the public interest wherein exception to any written proficiency examination shall be made with respect to individuals who have demonstrated, through training and experience, the degree of proficiency and skill necessary to protect the interests of customers, clients, pool participants, or other members of the public with whom such individuals deal.

(b) The Commission shall issue regulations to require new registrants, within six months after receiving such registration, to attend a training session, and all other registrants to attend periodic training sessions, to ensure that registrants understand their responsibilities to the public under this Act, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, *derivatives transaction execution facility*, registered futures association, or other self-regulatory organization, or any other applicable Federal or state law, rule or regulation.

**SEC. 4q. SPECIAL PROCEDURES TO ENCOURAGE AND FACILITATE BONA FIDE HEDGING BY AGRICULTURAL PRODUCERS.**

(a) *AUTHORITY.*—*The Commission shall consider issuing rules or orders which—*

*(1) prescribe procedures under which each contract market is to provide for orderly delivery, including temporary storage costs, of any agricultural commodity enumerated in section 1a(4) which is the subject of a contract for purchase or sale for future delivery;*

*(2) increase the ease with which domestic agricultural producers may participate in contract markets, including by addressing cost and margin requirements, so as to better enable such producers to hedge price risk associated with their production;*

*(3) provide flexibility in the minimum quantities of such agricultural commodities that may be the subject of a contract for purchase or sale for future delivery that is traded on a contract market, to better allow domestic agricultural producers to hedge such price risk; and*

*(4) encourage exchanges to provide information and otherwise facilitate the participation of domestic agricultural producers in contract markets.*

(b) *REPORT.*—*Within 1 year after the date of enactment of this section, the Commission shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the steps it has taken to implement this section and on the activities of contract markets pursuant to this section.*

**[SEC. 5.** The Commission is hereby authorized and directed to designate any board of trade as a “contract market” when, and only when, such board of trade complies with and carries out the following conditions and requirements:

**[(1)** When located at a terminal market where any cash commodity of the kind specified in the contracts of sale of commodities for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the commodity and the differences in value between the various grades of such commodity, and

where there is available to such board of trade official inspection service approved by the Secretary of Agriculture or the Commission for the purpose: *Provided*, That any board of trade not so located shall be designated as a "contract market" if such board of trade provides for the delivery of commodities on such contracts at a delivery point or points and upon terms and conditions approved by the Commission.

[(2) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Commission may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Commission, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions or transactions for future delivery consummated on or subject to the rules of a board of trade, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Commission may direct, showing the details and terms of all cash and future transactions entered into by them, consummated on or subject to the rules of a board of trade, such record to be in permanent form, showing the parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, and shall at all times be open to the inspection of any representative of the Commission or United States Department of Justice.

[(3) When the governing board thereof provides for the prevention of dissemination by the board or any member thereof, of false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce.

[(4) When the governing board thereof provides for the prevention of manipulation of prices and the cornering of any commodity by the dealers or operators upon such board.

[(5) When the governing board thereof does not exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in any cash commodity business, if such association has complied, and agrees to comply, with such terms and conditions as are or may be imposed lawfully on other members of such board: *Provided*, That no rule of a contract market shall forbid or be construed to forbid the return on a patronage basis by such cooperative association to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

[(6) When the governing board provides for making effective the final orders or decisions entered pursuant to the provisions of section 6(c), and the orders issued pursuant to the provisions of section 5a of this Act, and for compliance in all other re-

spects with the requirements applicable to such board of trade under this Act.

[(7) When such board of trade demonstrates that transactions for future delivery in the commodity for which designation as a contract market is sought will not be contrary to the public interest.

[(8) When such board of trade demonstrates that every contract market for which such board of trade is designated complies with the requirements of section 5a(b).

[SEC. 5a. (a) Each contract market shall—

[(1) promptly furnish the Commission copies of all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or any committee, and of all changes and proposed changes therein;

[(2) keep all books, records, minutes, and journals of proceedings of such contract market, and its governing board, committees, subsidiaries, and affiliates in a manner that will clearly describe all matters discussed by such contract market, governing board, committees, subsidiaries and affiliates and reveal any action taken in such matters, and allow inspection at all times by any authorized representative of the Commission or United States Department of Justice of all such books, records, minutes, and journals of proceedings. Such books, records, minutes, and journals of proceedings shall be kept for a period of three years from the date thereof, or for a longer period if the Commission shall so direct;

[(3) require the operators of warehouses in which or out of which any commodity is deliverable on any contract for future delivery made on or subject to the rules of such contract market, to make such reports, keep such records, and permit such warehouse visitation as the Commission may prescribe. Such books and records shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, and such books, records, and warehouses shall be open at all times to inspection by any representative of the Commission or United States Department of Justice;

[(4) when so directed by order of the Commission, provide for a period, after trading in contracts of sale of any commodity for future delivery in a delivery month has ceased, during which contracts of sale of such commodity for future delivery in such month may be satisfied by the delivery of the actual cash commodity. Whenever, after due notice and opportunity for hearing, the Commission finds that provision for such a period of delivery for any one or more commodities or markets would prevent or tend to prevent “squeezes” and market congestion endangering price stability, it shall, by order, require such period of delivery (which shall be not less than three nor more than ten business days) applicable to such commodities and markets as it finds will prevent or tend to prevent such “squeezes” and market congestion: *Provided, however,* That such order shall not apply to then existing contracts;

[(5) require the party making delivery of any commodity on any contract of sale of such commodity for future delivery to furnish the party obligated under the contract to accept deliv-

ery, written notice of the date of delivery at least one business day prior to such date of delivery. Whenever, after due notice and opportunity for hearing, the Commission finds that the giving of longer notice of delivery is necessary to prevent or diminish unfair practices in trading in any one or more commodities or markets, it shall by order require such longer notice of delivery (which shall be not more than ten business days) applicable to such commodities and markets as it finds will prevent or diminish such unfair practices: *Provided, however,* That such order shall not apply to then existing contracts;

[(6) require that all contracts of sale of any commodity for future delivery on such contract market shall provide for the delivery thereunder of commodities of grades conforming to United States standards, if such standards shall have been officially promulgated and adopted by the Commission;

[(7) require that receipts issued under the United States Warehouse Act (U.S.C., 1934 ed., title 7, secs. 241-273) shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law: *Provided, however,* That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes: *And provided further,* That this subsection shall apply only to futures contracts for those commodities which may be delivered from a warehouse subject to the United States Warehouse Act;

[(8) enforce all bylaws, rules, regulations, and resolutions, made or issued by it or by the governing board thereof or any committee, that (i) have been approved by the Commission pursuant to paragraph (12) of this section, (ii) have become effective under such paragraph, or (iii) must be enforced pursuant to any Commission rule, regulation, or order; and revoke and not enforce any bylaw, rule, regulation, or resolution, made, issued, or proposed by it or by the governing board thereof or any committee, that has been disapproved by the Commission;

[(9) enforce all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or by any committee, which provide minimum financial standards and related reporting requirements for futures commission merchants who are members of such contract market, and which have been approved by the Commission;

[(10) permit the delivery of any commodity, on contracts of sale thereof for future delivery, of such grade or grades, at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce. If the Commission after investigation finds that the rules and regulations adopted by a



contract market permitting delivery of any commodity on contracts of sale thereof for future delivery, do not accomplish the objectives of this subsection, then the Commission shall notify the contract market of its finding and afford the contract market an opportunity to make appropriate changes in such rules and regulations. If the contract market within seventy-five days of such notification fails to make the changes which in the opinion of the Commission are necessary to accomplish the objectives of this subsection, then the Commission after granting the contract market an opportunity to be heard, may change or supplement such rules and regulations of the contract market to achieve the above objectives: *Provided*, That any order issued under this paragraph shall not apply to contracts of sale for future delivery in any months in which contracts are currently outstanding and open: *And provided further*, That no requirement for an additional delivery point or points shall be promulgated following hearings until the contract market affected has had notice and opportunity to file exceptions to the proposed order determining the location and number of such delivery point or points;

[(11) provide a fair and equitable procedure through arbitration or otherwise (such as by delegation to a registered futures association having rules providing for such procedures) for the settlement of customers' claims and grievances against any member or employee thereof: *Provided*, That (A) the use of such procedure by a customer shall be voluntary, (B) the term "customer" as used in this paragraph shall not include another member of the contract market, and (C) in the case of a claim arising from a violation in the execution of an order on the floor of a contract market, such procedure shall provide, to the extent appropriate—

[(i) for payment of actual damages proximately caused by such violation. If an award of actual damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) for the floor broker's violation, such futures commission merchant may be required to satisfy such award; and

[(ii) where the violation is willful and intentional, for payment to the customer of punitive or exemplary damages, in addition to losses proximately caused by the violation, in an amount equal to no more than two times the amount of such losses. If punitive or exemplary damages are awarded against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of such order is held to be responsible under section 2(a)(1) for the floor broker's violation, such futures commission merchant may be required to satisfy the award of punitive or exemplary damages if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation;

[(12)(A) except as otherwise provided in this paragraph, submit to the Commission for its prior approval all bylaws, rules, regulations, and resolutions (“rules”) made or issued by such contract market, or by the governing board thereof or any committee thereof, that relate to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market, as such terms and conditions are defined by the Commission by rule or regulation, except those rules relating to the setting of levels of margin. Each contract market shall submit to the Commission all other rules (except those relating to the setting of levels of margin and except those that the Commission may specify by regulation) and may make such rules effective ten days after receipt of such submission by the Commission unless, within the ten-day period, the contract market requests review and approval thereof by the Commission or the Commission notifies such contract market in writing of its determination to review such rules for approval. The determination to review such rules for approval shall not be delegable to any employee of the Commission. At least thirty days before approving any rules of major economic significance, as determined by the Commission, the Commission shall publish a notice of such rules in the Federal Register. The Commission shall give interested persons an opportunity to participate in the approval process through the submission of written data, views, or arguments. The determination by the Commission whether any such rules are of major economic significance shall be final and not subject to judicial review. The Commission shall approve such rules if such rules are determined by the Commission not to be in violation of this Act or the regulations of the Commission and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be in violation of the provisions of this Act or the regulations of the Commission. If the Commission institutes proceedings to determine whether a rule should be disapproved pursuant to this paragraph, it shall provide the contract market with written notice of the proposed grounds for disapproval, including the specific sections of this Act or the Commission’s regulations which would be violated. At the conclusion of such proceedings, the Commission shall approve or disapprove such rule. Any disapproval shall specify the sections of this Act or the Commission’s regulations which the Commission determines such rule has violated or, if effective, would violate. If the Commission does not approve or institute disapproval proceedings with respect to any rule within one hundred and eighty days after receipt or within such longer period as the contract market may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the contract market may agree to, such rule may be made effective by the contract market until such time as the Commission disapproves such rule in accordance with this paragraph.

[(B)(i) The Commission shall issue regulations to specify the terms and conditions under which, in an emergency as defined by the Commission, a contract market may, by a two-thirds

vote of its governing board, make a rule (hereinafter referred to as an “emergency rule”) effective on a temporary basis without prior Commission approval, or without compliance with the ten-day notice requirement under subparagraph (A), or during any period of review by the Commission, if the contract market makes every effort practicable to notify the Commission of such emergency rule, along with a complete explanation of the emergency involved, prior to making the emergency rule effective. If the contract market does not provide the Commission with such notification and explanation before making the emergency rule effective, the contract market shall provide the Commission with such notification and explanation at the earliest possible date. The Commission may delegate the power to receive such notification and explanation to such individuals as the Commission determines necessary and appropriate.

[(ii) Within ten days of the receipt from a contract market of notification of such an emergency rule and an explanation of the emergency involved, or as soon as practicable, the Commission shall determine whether it is appropriate either—

[(I) to permit such rule to remain in effect during the pendency of the emergency, or

[(II) to suspend the effect of such rule pending review either under the procedures of subparagraph (A) or otherwise.

The Commission shall submit a report on its determination and the basis thereof with respect to such emergency rule to the affected contract market, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. If the report is submitted more than ten days after the Commission’s receipt of notification of such an emergency rule from a contract market, the report shall explain why submission within such ten-day period was not practicable. A determination by the Commission to suspend the effect of a rule under this subparagraph shall be subject to judicial review on the same basis as an emergency determination under section 8a(9). Nothing in this paragraph shall be construed to limit the authority of the Commission under section 8a(9);

[(13) provide for disclosure to the contract market and the Commission of any trade, business, or financial partnership, cost-, profit-, or capital-sharing agreements or other formal arrangement among or between floor brokers and traders on such contract market where such partnership agreement or arrangement is material and known to the floor broker or floor trader;

[(14)(A) provide for meaningful representation on the governing board of the contract market’s board of trade of a diversity of interests, including—

[(i) futures commission merchants;

[(ii) producers of, and consumers, processors, distributors, or merchandisers of, principal commodities traded on the board of trade;

[(iii) floor brokers and traders; and

[(iv) participants in a variety of pits or principal groups of commodities traded on the exchange.

[(B) provide that no less than 20 percent of the regular voting members of such board be comprised of nonmembers of such contract market's board of trade with—

[(i) expertise in futures trading, or the regulation thereof, or in commodities traded through contracts on the board of trade; or

[(ii) other eminent qualifications making such person capable of participating in and contributing to board deliberations.

[(C) provide that no less than 10 percent of the regular voting members of such board be comprised where applicable of farmers, producers, merchants, or exporters of principal commodities traded on the exchange;

[(15)(A) provide on all major disciplinary committees for a diversity of membership sufficient to ensure fairness and to prevent special treatment or preference for any person in the conduct of disciplinary proceedings and the assessment of penalties.

[(B) Consistent with Commission rules, a major disciplinary committee hearing a disciplinary matter shall include—

[(i) a majority of qualified persons representing a trading status other than that of the subject of the proceeding; and

[(ii) where appropriate to carry out the purposes of this Act, qualified persons who are not members of the exchange.

[(C) For purposes of this paragraph, a trading status on a contract market may include, consistent with Commission rules, such categories as—

[(i) floor brokers and traders;

[(ii) producers, consumers, processors, distributors, or merchandisers of commodities;

[(iii) futures commission merchants; and

[(iv) members of the aforementioned categories who participate in particular contract markets or principal groups of commodities on the board of trade.

[(D) If a contract market takes final disciplinary action against a member for a violation that involves the execution of a customer transaction and results in financial harm to such customer, the contract market shall promptly inform the futures commission merchant identified on the records of such contract market as having cleared such transaction, and such futures commission merchant shall promptly inform the person identified on its records as the owner of the account for which such transaction was executed, of the disciplinary action and the principal facts thereof;

[(16) provide that no member found by the Commission, a contract market, a registered futures association, or a court of competent jurisdiction to have committed any violation of this Act or any other provision of law that would reflect on the fitness of the member may serve on any contract market oversight or disciplinary panel for an appropriate period (as defined by Commission rule); and

[(17)(A) provide for the avoidance of conflict of interest in deliberations by the governing board and any disciplinary and

oversight committees. In order to comply with this subparagraph, each contract market shall adopt rules and procedures to require, at a minimum, that

[(i) any member of a governing board or a disciplinary or other oversight committee must abstain from confidential deliberations and voting on any matter where the named party in interest is the member, the member's employer, the member's employee, or any other person that has a business, employment, or family relationship with the member that warrants abstention by the member;

[(ii) any member of a governing board or a disciplinary or other oversight committee must abstain from voting on any significant action that would not be submitted to the Commission for its prior approval, if, as determined in accordance with regulations promulgated by the Commission, the member knowingly has a direct and substantial financial interest in the result of the vote, based either on positions held personally or at an affiliated firm;

[(iii) prior to the deliberations of the governing board, disciplinary board, or other oversight committee, acting directly or indirectly through an authorized member or contract market official, the positions of the members of such board or committee, and positions of the firm or firms with which such members are affiliated, are reviewed: *Provided, however,* That no contract market or official, employee, member, other than the member whose position or positions are being reviewed, or agent thereof shall be subject to liability, except for liability in an action initiated by the Commission, for having conducted this review and for having taken or not taken further action; and

[(iv) the board or committee shall clearly reflect, in the minutes of such meeting, that the review required in clause (iii) occurred and any decisions by a member to abstain or by the board or committee whether to direct a member or members to abstain from deliberations or voting on the matter before the board or committee.

Any member prohibited from voting on a rule pursuant to this paragraph shall not be included in determining whether there has been a two-thirds vote of members of the governing board or committee as required by subparagraph (12).

[(B) For the purposes of this paragraph, the term "significant action that would not be submitted to the Commission for its prior approval" includes—

[(i) any nonphysical emergency rule; or

[(ii) any changes in margin levels designed to respond to extraordinary market conditions that are likely to have a substantial affect on prices in any contract traded on such contract market, but does not include any rule not submitted for prior Commission approval because such rule is unrelated to terms and conditions of any contract traded on such contract market.

[(C) Notwithstanding the provisions of subparagraph (A)(ii), the Commission shall issue rules establishing the conditions under which a member of a board or committee who is required to abstain from voting on a significant action, as pro-

vided in subparagraph (A)(ii), may participate in deliberations on that action prior to such vote, where the member's participation is consistent with the public interest.

[(b)(1) Each contract market shall maintain and utilize a system to monitor trading to detect and deter violations of the contract market's rules and regulations committed in the making of trades and the execution of customer orders on the floor or subject to the rules of such contract market. The system shall include—

[(A) physical observation of trading areas;

[(B) audit trail and recordkeeping systems able to capture essential data on the terms, participants, and sequence of transactions (including relevant data on unmatched trades and out-trades);

[(C) systems capable of reviewing, and used to review, data on trades effectively on a regular basis to detect violations committed in making trades and executing customer orders on the floor or subject to the rules of such contract market, including—

[(i) all types of violations attributable to dual trading; and

[(ii) to the full extent feasible, as determined by the Commission, all other types of violations involving the making of trades and the execution of customer orders;

[(D) the use of information gathered through such system on a consistent basis to bring appropriate disciplinary actions against violators;

[(E) the commitment of resources to such system necessary for such system to be effective in detecting and deterring such violations, including adequate staff to develop and prosecute disciplinary actions; and

[(F) the assessment of meaningful penalties against violators and the referral of appropriate cases to the Commission.

[(2) The audit trail system of the contract market shall, consistent with Commission regulations, accurately record—

[(A) the times of trades in increments of no more than one minute in length; and

[(B) the sequence of trades for each floor trader and broker.

[(3) Beginning three years after the date of enactment of this subsection, the audit trail system of each contract market, except as provided in paragraph (5) and except to the extent the Commission determines that circumstances beyond the control of the contract market prevent compliance despite the contract market's affirmative good faith efforts to comply, shall—

[(A) for all trades, record accurately and promptly the essential data on terms, participants, and times as required by the Commission by rule, including the time of execution of such trade, through a means that—

[(i) records such data in a form which cannot be altered except in a manner that will leave a complete and independent record of such alteration;

[(iii) identifies such time, to the extent practicable as determined by the Commission—

[(ii) continually provides such data to the contract market;

[(I) independently of the person making the trade;

[(II) through a mechanism that records the time automatically when entered by the person making the trade; or

[(III) through such other means that will capture a similarly reliable time; and

[(iv) is adequately precise to determine, to the extent practicable as determined by the Commission by rule or order—

[(I) the sequence of all trades by each floor trader; and

[(II) the sequence of all trades by each floor broker; and

[(B) to the extent practicable as determined by the Commission by rule or order, for customer trades, record the time that each order is received on the floor of the board of trade, is received by the floor broker for execution (or when such order is transmitted in an extremely rapid manner to the broker), and is reported from the floor of the board of trade as executed, through a means that—

[(i) records such times in a form which cannot be altered except in a manner that will leave a complete and independent record of such alteration;

[(ii) continually provides such data to the contract market;

[(iii) identifies such time—

[(I) independently of the person making the trade or processing the order;

[(II) through a mechanism that records the time automatically when entered by the person making the trade or processing such order, as appropriate; or

[(III) through such other means as will capture a similarly reliable time; and

[(iv) is adequately precise to determine—

[(I) the sequence in which, for each futures commission merchant, floor broker, or member firm, as applicable, all orders are received on and reported from the floor of the contract market; and

[(II) the sequence in which orders are received by each floor broker for execution.

[(4) The Commission may, by rule, establish standards under which the audit trail systems required under paragraph (3) shall record, to the extent practicable—

[(A) the sequence of all trades made by all floor traders and floor brokers; and

[(B) the interval between the time of receipt and the time of execution of each order by the floor broker executing the order.

[(5)(A) The Commission shall, by rule or order, make exemptions from the requirements of paragraph (3)—

[(i) for an exchange with respect to which the Commission finds that—

[(I) the volume of trading on such exchange is relatively small and the exchange has demonstrated substantial compliance with the objectives of such paragraph; and

[(II) the trade monitoring system at such exchange otherwise maintains a high level of compliance with this subsection; and

[(ii) to the extent determined appropriate by the Commission, for categories of customer orders with respect to which the Commission finds that such orders are transmitted to and reported from the trading pit in an extremely rapid manner such that substantial compliance with the objectives of paragraph (3) can be otherwise achieved.

[(B) For purposes of subparagraph (A)(i)(I) the Commission shall find that the volume of trading at an exchange is relatively small if, among other things, the Commission determines that the average daily trading volume for each contract market for which the board of trade is designated is less than the threshold trading level established for the contract market under section 4j(a)(4).

[(6) Any rule or order adopted by the Commission under paragraphs (4) and (5) shall become effective thirty legislative days or ninety calendar days, whichever is later, after submission of such rule or order to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. For purposes of this paragraph, the term “legislative day” means any day on which either House of Congress is in session.

[SEC. 5b. The failure or refusal of any board of trade to comply with any of the provisions of this Act, or any of the rules, regulations, or orders of the Commission or the commission thereunder, shall be cause for suspending for a period not to exceed six months or revoking the designation of such board of trade as a “contract market” in accordance with the procedure and subject to the judicial review provided in section 6(b) of this Act.]

**SEC. 5. DESIGNATION OF BOARDS OF TRADE AS CONTRACT MARKETS.**

(a) *APPLICATIONS.*—A board of trade applying to the Commission for designation as a contract market shall submit an application to the Commission that includes any relevant materials and records the Commission may require consistent with this Act.

(b) *CRITERIA FOR DESIGNATION.*—

(1) *IN GENERAL.*—To be designated as a contract market, the board of trade shall demonstrate to the Commission that the board of trade meets the criteria specified in this subsection.

(2) *PREVENTION OF MARKET MANIPULATION.*—The board of trade shall have the capacity to prevent market manipulation through market surveillance, compliance, and enforcement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

(3) *FAIR AND EQUITABLE TRADING.*—The board of trade shall establish and enforce trading rules to ensure fair and equitable trading through the facilities of the contract market, and the capacity to detect, investigate, and discipline any person that violates the rules. Such rules may authorize—

(A) an exchange of—

(i) futures in connection with a cash commodity transaction;

(ii) futures for cash commodities;

(iii) transfer trades or office trades; or



(iv) futures for swaps; and

(B) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

(4) **TRADE EXECUTION FACILITY.**—The board of trade shall—

(A) establish and enforce rules defining, or specifications detailing, the manner of operation of the trade execution facility maintained by the board of trade, including rules or specifications describing the operation of any electronic matching platform; and

(B) demonstrate that the trading facility operates in accordance with the rules or specifications.

(5) **FINANCIAL INTEGRITY OF TRANSACTIONS.**—The board of trade shall establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into by or through the facilities of the contract market.

(6) **DISCIPLINARY PROCEDURES.**—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.

(7) **PUBLIC ACCESS.**—The board of trade shall provide the public with access to the rules, regulations, and contract specifications of the board of trade.

(8) **ABILITY TO OBTAIN INFORMATION.**—The board of trade shall establish and enforce rules that will allow the board of trade to obtain any necessary information to perform any of the functions described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.

(c) **EXISTING CONTRACT MARKETS.**—A board of trade that is designated as a contract market on the effective date of the Commodity Futures Modernization Act of 2000 shall be considered to be a designated contract market under this section.

(d) **CORE PRINCIPLES FOR CONTRACT MARKETS.**—

(1) **IN GENERAL.**—To maintain the designation of a board of trade as a contract market, a board of trade shall comply with the core principles specified in this subsection.

(2) **COMPLIANCE WITH RULES.**—The board of trade shall monitor and enforce compliance with the rules of the contract market, including the terms and conditions of any contracts to be traded and any limitations on access to the contract market.

(3) **CONTRACTS NOT READILY SUBJECT TO MANIPULATION.**—The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

(4) **MONITORING OF TRADING.**—The board of trade shall monitor trading to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process.

(5) **POSITION LIMITATIONS OR ACCOUNTABILITY.**—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade

*shall adopt position limitations or position accountability for speculators, where necessary and appropriate.*

(6) *EMERGENCY AUTHORITY.*—The board of trade shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to—

(A) liquidate or transfer open positions in any contract;

(B) suspend or curtail trading in any contract; and

(C) require market participants in any contract to meet special margin requirements.

(7) *AVAILABILITY OF GENERAL INFORMATION.*—The board of trade shall make available to market authorities, market participants, and the public information concerning—

(A) the terms and conditions of the contracts of the contract market; and

(B) the mechanisms for executing transactions on or through the facilities of the contract market.

(8) *DAILY PUBLICATION OF TRADING INFORMATION.*—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

(9) *EXECUTION OF TRANSACTIONS.*—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions.

(10) *TRADE INFORMATION.*—The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information for purposes of assisting in the prevention of customer and market abuses and providing evidence of any violations of the rules of the contract market.

(11) *FINANCIAL INTEGRITY OF CONTRACTS.*—The board of trade shall establish and enforce rules providing for the financial integrity of any contracts traded on the contract market, including rules to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.

(12) *PROTECTION OF MARKET PARTICIPANTS.*—The board of trade shall establish and enforce rules to protect market participants from abusive practices committed by any party acting as an agent for the participants.

(13) *DISPUTE RESOLUTION.*—The board of trade shall establish and enforce rules regarding and provide facilities for alternative dispute resolution as appropriate for market participants and any market intermediaries.

(14) *GOVERNANCE FITNESS STANDARDS.*—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other persons with direct access to the facility (including any parties affiliated with any of the persons described in this paragraph).

(15) *CONFLICTS OF INTEREST.*—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market and establish a process for resolving such conflicts of interest.

(16) *COMPOSITION OF BOARDS OF MUTUALLY OWNED CONTRACT MARKETS.*—In the case of a mutually owned contract market, the board of trade shall ensure that the composition of the governing board reflects market participants.

(17) *RECORDKEEPING.*—The board of trade shall—

(A) maintain full records of all activities related to the business of the contract market in a form and manner acceptable to the Commission for a period of at least 5 years;

(B) make the records readily available during at least the first 2 years of the 5-year period and provide the records to the Commission at the expense of the person required to maintain the records; and

(C) keep the records open to inspection by any representative of the Commission or the Department of Justice.

(18) *ANTITRUST CONSIDERATIONS.*—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall not—

(A) adopt any rules or taking any actions that result in any unreasonable restraints of trade; or

(B) impose any material anticompetitive burden on trading on the contract market.

(e) *CURRENT AGRICULTURAL AND METAL COMMODITIES.*—

(1) Subject to paragraph (2), a contract for purchase or sale for future delivery of an agricultural or metal commodity enumerated in section 1a(4) that is available for trade on a contract market, as of the date of the enactment of this subsection, may be traded only on a contract market designated under this section.

(2) In order to promote responsible economic or financial innovation and fair competition, the Commission, on application by any person, after notice and public comment and opportunity for hearing, may prescribe rules and regulations to provide for the offer and sale of contracts for future delivery or options thereon to be conducted on a derivatives transaction execution facility.

**SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILITIES.**

(a) *IN GENERAL.*—In lieu of compliance with the contract market designation requirements of section 5, a board of trade may elect to operate as a registered derivatives transaction execution facility if the facility is—

(1) designated as a contract market and meets the requirements of this section; or

(2) registered as a derivatives transaction execution facility under subsection (c).

(b) *REQUIREMENTS FOR TRADING FUTURES CONTRACTS OR OTHER DERIVATIVES TRANSACTIONS.*—

(1) *IN GENERAL.*—A registered derivatives transaction execution facility under subsection (a) may trade any futures contract (or option on such a contract) on or through the facility only by satisfying the requirements of this section.

(2) *REQUIREMENTS FOR UNDERLYING COMMODITIES.*—A registered derivatives transaction execution facility may trade any futures contract only if—

(A) the underlying commodity has a nearly inexhaustible deliverable supply;

(B) the underlying commodity has a deliverable supply that is sufficiently large that the contract is not readily susceptible to manipulation;

(C) the underlying commodity has no cash market; or

(D) the Commission determines, based on the market characteristics, surveillance history, self-regulatory record, or capacity of the facility that trading in the futures contract is not readily susceptible to manipulation.

(3) *ELIGIBLE TRADERS.*—To trade on a registered derivatives transaction execution facility, a person shall—

(A) be authorized by the board of trade to trade on the facility; and

(B)(i) be an eligible contract participant; or

(ii) be a person trading through a futures commission merchant that—

(I) is registered with the Commission;

(II) is a member of a futures self-regulatory organization;

(III) is a clearing member of a derivatives clearing organization; and

(IV) has net capital of at least \$20,000,000.

(4) *TRADING BY CONTRACT MARKETS.*—A board of trade that is designated as a contract market shall, to the extent that the contract market also operates a registered derivatives transaction execution facility—

(A) provide a physical location for the contract market trading of the board of trade that is separate from trading on the derivatives transaction execution facility of the board of trade; or

(B) if the board of trade uses the same electronic trading system for trading on the contract market and derivatives transaction execution facility of the board of trade, identify whether the electronic trading is taking place on the contract market or the derivatives transaction execution facility.

(5) *IMPERMISSIBLE PRODUCTS.*—It shall be unlawful for any person to execute or trade a security future product or other future involving a security, except an exempt security as defined in section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982, on a designated transaction execution facility.

(c) *CRITERIA FOR REGISTRATION.*—

(1) *IN GENERAL.*—To be registered as a registered derivatives transaction execution facility, the board of trade shall demonstrate to the Commission that the board of trade meets the criteria specified in this subsection.

(2) *DETERRENCE OF ABUSES.*—The board of trade shall establish and enforce trading rules that will deter abuses and has the capacity to detect, investigate, and enforce those rules, including means to—

(A) obtain information necessary to perform the functions required under this section; or

(B) use technological means to—

(i) provide market participants with impartial access to the market; and

(ii) capture information that may be used in establishing whether rule violations have occurred.

(3) *TRADING PROCEDURES.*—The board of trade shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on the facilities of the board of trade. Such rules may authorize—

(A) an exchange of—

(i) futures in connection with a cash commodity transaction;

(ii) futures for cash commodities;

(iii) transfer trades or office trades; or

(iv) futures for swaps; and

(B) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the registered derivatives transaction execution facility or a derivatives clearing organization.

(4) *FINANCIAL INTEGRITY OF TRANSACTIONS.*—The board of trade shall establish and enforce rules or terms and conditions providing for the financial integrity of transactions entered on or through the facilities of the board of trade, including rules or terms and conditions to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.

(d) *CORE PRINCIPLES FOR REGISTERED DERIVATIVES TRANSACTION EXECUTION FACILITIES.*—

(1) *IN GENERAL.*—To maintain the registration of a board of trade as a derivatives transaction execution facility, a board of trade shall comply with the core principles specified in this subsection.

(2) *COMPLIANCE WITH RULES.*—The board of trade shall monitor and enforce the rules of the facility, including any terms and conditions of any contracts traded on or through the facility and any limitations on access to the facility.

(3) *MONITORING OF TRADING.*—The board of trade shall monitor trading in the contracts of the facility to ensure orderly trading in the contract and to maintain an orderly market while providing any necessary trading information to the Commission to allow the Commission to discharge the responsibilities of the Commission under the Act.

(4) *DISCLOSURE OF GENERAL INFORMATION.*—The board of trade shall disclose publicly and to the Commission information concerning—

(A) contract terms and conditions;

(B) trading conventions, mechanisms, and practices;

(C) financial integrity protections; and

(D) other information relevant to participation in trading on the facility.

(5) *DAILY PUBLICATION OF TRADING INFORMATION.*—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the facility.

(6) *FITNESS STANDARDS.*—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members, and any other persons with direct access to the facility, including any parties affiliated with any of the persons described in this paragraph.

(7) *CONFLICTS OF INTEREST.*—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the derivatives transaction execution facility and establish a process for resolving such conflicts of interest.

(8) *RECORDKEEPING.*—The board of trade shall—

(A) maintain full records of all activities related to the business of the derivatives transaction execution facility in a form and manner acceptable to the Commission for a period of at least 5 years;

(B) make the records readily available during at least the first 2 years of the 5-year period and provide the records to the Commission at the expense of the person required to maintain the records; and

(C) keep the records open to inspection by any representatives of the Commission or the Department of Justice.

(9) *ANTITRUST CONSIDERATIONS.*—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall not—

(A) adopt any rules or take any actions that result in any unreasonable restraint of trade; or

(B) impose any material anticompetitive burden on trading on the derivatives transaction execution facility.

(e) *USE OF BROKER-DEALERS, DEPOSITORY INSTITUTIONS, AND FARM CREDIT SYSTEM INSTITUTIONS AS INTERMEDIARIES.*—

(1) *IN GENERAL.*—A registered derivatives transaction execution facility may by rule allow a broker-dealer, depository institution, or institution of the Farm Credit System that meets the requirements of paragraph (2) to—

(A) act as an intermediary in transactions executed on the facility on behalf of customers of the broker-dealer, depository institution, or institution of the Farm Credit System; and

(B) receive funds of customers to serve as margin or security for such transactions.

(2) *REQUIREMENTS.*—The requirements referred to in paragraph (1) are that—

(A) the broker-dealer be in good standing with the Securities and Exchange Commission, or the depository institution or institution of the Farm Credit System be in good standing with Federal bank regulatory agencies (including the Farm Credit Administration), as applicable; and

(B) if the broker-dealer, depository institution, or institution of the Farm Credit System carries or holds customer accounts or funds for transactions on the derivatives transaction execution facility for more than 1 business day, the broker-dealer, depository institution, or institution of the Farm Credit System is registered as a futures commission merchant and is a member of a registered futures association.

(3) *IMPLEMENTATION.*—The Commission shall cooperate and coordinate with the Securities and Exchange Commission, the Secretary of the Treasury, and Federal banking regulatory agencies (including the Farm Credit Administration) in adopting rules and taking any other appropriate action to facilitate the implementation of this subsection.

(f) *SEGREGATION OF CUSTOMER FUNDS.*—Not later than 180 days after the effective date of the Commodity Futures Modernization Act of 2000, consistent with regulations adopted by the Commission, a registered derivatives transaction execution facility may authorize a futures commission merchant to offer any customer of the futures commission merchant that is an eligible contract participant the right to not segregate the customer funds of the futures commission merchant for purposes of trading on or through the facilities of the registered derivatives transaction execution facility.

(g) *ELECTION TO TRADE EXCLUDED COMMODITIES.*—

(1) *IN GENERAL.*—A board of trade that is a registered derivatives transaction execution facility may trade on the facility any agreements, contracts, or transactions involving excluded commodities other than securities, except exempt securities under section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982, that are otherwise excluded or exempt from this Act under section 2(c), 2(d), or 2(h). Notwithstanding section 5a(b)(2), a board of trade on which agreements, contracts, or transactions excluded or exempt from this Act under section 2(c), 2(d), or 2(h) are traded may elect, but shall not be required, to register as a derivatives transaction execution facility with respect to such agreements, contracts, or transactions, other than any agreement, contract, or transaction in a security other than such an exempt security.

(2) *EXCLUSIVE JURISDICTION OF THE COMMISSION.*—The Commission shall have exclusive jurisdiction over agreements, contracts, or transactions described in paragraph (1) to the extent that the agreements, contracts, or transactions are traded on a derivatives transaction execution facility.

#### **SEC. 5b. DERIVATIVES CLEARING ORGANIZATIONS.**

(a) *REGISTRATION REQUIREMENT.*—Except as provided in subsection (b), it shall be unlawful for a derivatives clearing organization, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization described in section 1a(9).

(b) *EXCLUSION OF DERIVATIVES CLEARING ORGANIZATIONS SUBJECT TO OTHER REGULATORY AUTHORITIES.*—A derivatives clearing organization shall not be required to register with the Commission, and the Commission shall have no jurisdiction with respect to the derivatives clearing organization, if the derivatives clearing organization—

(1)(A) is registered as a clearing agency under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(B) is subject to the supervisory jurisdiction of a Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) or the National Credit Union Administration; or

(C) is subject to the supervisory jurisdiction of a foreign regulatory authority that is recognized by the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Commission as overseeing a system of consolidated supervision comparable to that provided under applicable United States law; and

(2) does not clear—

(A) a contract of sale for future delivery other than a security future product;

(B) an option on a contract of sale for future delivery other than a security future product; or

(C) an option on a commodity other than a security.

(c) VOLUNTARY REGISTRATION.—A derivatives clearing organization that is not exempt from registration under subsection (b) may register with the Commission as a derivatives clearing organization.

(d) REGISTRATION OF DERIVATIVES CLEARING ORGANIZATIONS.—

(1) APPLICATION.—A person desiring to register as a derivatives clearing organization shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval under paragraph (2).

(2) CORE PRINCIPLES.—

(A) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, an applicant shall demonstrate to the Commission that the applicant complies with the core principles specified in this paragraph.

(B) FINANCIAL RESOURCES.—The applicant shall demonstrate that the applicant has adequate financial, operational, and managerial resources to discharge the responsibilities of a derivatives clearing organization without interruption in various market conditions.

(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—The applicant shall establish—

(i) appropriate admission and continuing eligibility standards (including appropriate minimum financial requirements) for members of and participants in the organization; and

(ii) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the applicant.

(D) RISK MANAGEMENT.—The applicant shall have the ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.

(E) SETTLEMENT PROCEDURES.—The applicant shall have the ability to—

(i) complete settlements on a timely basis under varying circumstances;

(ii) maintain an adequate record of the flow of funds associated with each transaction that the applicant clears; and



(iii) comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations.

(F) *TREATMENT OF FUNDS.*—The applicant shall have standards and procedures designed to protect and ensure the safety of member and participant funds.

(G) *DEFAULT RULES AND PROCEDURES.*—The applicant shall have rules and procedures designed to allow for efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the derivatives clearing organization.

(H) *RULE ENFORCEMENT.*—The applicant shall—

(i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with rules of the applicant and for resolution of disputes; and

(ii) have the authority and ability to discipline, limit, suspend, or terminate a member's or participant's activities for violations of rules of the applicant.

(I) *SYSTEM SAFEGUARDS.*—The applicant shall demonstrate that the applicant—

(i) has established and will maintain a program of oversight and risk analysis to ensure that the automated systems of the applicant function properly and have adequate capacity and security; and

(ii) has established and will maintain emergency procedures and a plan for disaster recovery, and will periodically test backup facilities sufficient to ensure daily processing, clearing, and settlement of transactions.

(J) *REPORTING.*—The applicant shall provide to the Commission all information necessary for the Commission to conduct the oversight function of the applicant with respect to the activities of the derivatives clearing organization.

(K) *RECORDKEEPING.*—The applicant shall—

(i) maintain full records of all activities related to the business of the applicant as a derivatives clearing organization in a form and manner acceptable to the Commission for a period of at least 5 years;

(ii) make the records readily available during at least the first 2 years of the 5-year period and provide the records to the Commission at the expense of the person required to maintain the records; and

(iii) keep the records open to inspection by any representative of the Commission or the Department of Justice.

(L) *PUBLIC INFORMATION.*—The applicant shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) available to market participants.

(M) *INFORMATION SHARING.*—The applicant shall—

(i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and

(ii) use relevant information obtained from the agreements in carrying out the clearing organization's risk management program.

(N) *ANTITRUST CONSIDERATIONS.*—Unless necessary or appropriate to achieve the purposes of this Act, the derivatives clearing organization shall not—

(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or

(ii) impose any material anticompetitive burden on trading on the contract market.

(3) *ORDERS CONCERNING COMPETITION.*—A derivatives clearing organization may request the Commission to issue an order concerning whether a rule or practice of the applicant is the least anticompetitive means of achieving the objectives, purposes, and policies of this Act.

(e) *EXISTING DERIVATIVES CLEARING ORGANIZATIONS.*—A derivatives clearing organization shall be deemed to be registered under this section to the extent that—

(1) the derivatives clearing organization clears agreements, contracts, or transactions for a board of trade that has been designated by the Commission as a contract market for such agreements, contracts, or transactions before the date of enactment of this section; and

(2) the Commission has reviewed and approved the rules of the derivatives clearing organization before that date.

(f) *APPOINTMENT OF TRUSTEE.*—

(1) *IN GENERAL.*—If a proceeding under section 5e results in the suspension or revocation of the registration of a derivatives clearing organization, or if a derivatives clearing organization withdraws from registration, the Commission, on notice to the derivatives clearing organization, may apply to the appropriate United States district court where the derivatives clearing organization is located for the appointment of a trustee.

(2) *ASSUMPTION OF JURISDICTION.*—If the Commission applies for appointment of a trustee under paragraph (1)—

(A) the court may take exclusive jurisdiction over the derivatives clearing organization and the records and assets of the derivatives clearing organization, wherever located; and

(B) if the court takes jurisdiction under subparagraph (A), the court shall appoint the Commission, or a person designated by the Commission, as trustee with power to take possession and continue to operate or terminate the operations of the derivatives clearing organization in an orderly manner for the protection of participants, subject to such terms and conditions as the court may prescribe.

(g) *LINKING OF REGULATED CLEARING FACILITIES.*—

(1) *IN GENERAL.*—The Commission shall facilitate the linking or coordination of derivatives clearing organizations registered under this Act with other regulated clearance facilities for the coordinated settlement of cleared transactions.

(2) *COORDINATION.*—In carrying out paragraph (1), the Commission shall coordinate with the Federal banking agencies and the Securities and Exchange Commission.

**SEC. 5c. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES.**

**(a) ACCEPTABLE BUSINESS PRACTICES UNDER CORE PRINCIPLES.—**

(1) *IN GENERAL.*—Consistent with the purposes of this Act, the Commission may issue interpretations, or approve interpretations submitted to the Commission, of sections 5(d), 5a(d), and 5b(d)(2) to describe what would constitute an acceptable business practice under such sections.

(2) *EFFECT OF INTERPRETATION.*—An interpretation issued under paragraph (1) shall not provide the exclusive means for complying with such sections.

**(b) DELEGATION OF FUNCTIONS UNDER CORE PRINCIPLES.—**

(1) *IN GENERAL.*—A contract market or derivatives transaction execution facility may comply with any applicable core principle through delegation of any relevant function to a registered futures association or another registered entity.

(2) *RESPONSIBILITY.*—A contract market or derivatives transaction execution facility that delegates a function under paragraph (1) shall remain responsible for carrying out the function.

**(c) NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS.—**

(1) *IN GENERAL.*—Except as provided in sections 2(a)(1)(C) and 2(a)(1)(D), and subject to paragraph (2), a registered entity may elect to list for trading any new contract or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale for future delivery of a government security (or option thereon) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract, new rule, or rule amendment complies with this Act (including regulations under this Act).

**(2) PRIOR APPROVAL.—**

(A) *IN GENERAL.*—A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

(B) *PRIOR APPROVAL REQUIRED.*—Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(4) of this Act (or any option thereon) traded through its facilities if such rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

(C) *DEADLINE.*—If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

(3) *APPROVAL.*—The Commission shall approve any such new contract or instrument, new rule, or rule amendment unless the

*Commission finds that the new contract or instrument, new rule, or rule amendment would violate this Act.*

(d) *RESERVATION OF EMERGENCY AUTHORITY.—Nothing in this section shall limit or in any way affect the emergency powers of the Commission provided in section 8a(9) of this Act.*

**SEC. 5d. EXEMPT BOARDS OF TRADE.**

(a) *IN GENERAL.—Except as otherwise provided in this section, a contract of sale (or option on such a contract) of a commodity for future delivery traded on or through the facilities of an exempt board of trade shall be exempt from all provisions of this Act, other than section 2(g).*

(b) *CRITERIA FOR EXEMPTION.—To qualify for an exemption under subsection (a), a board of trade shall limit trading on or through the facilities of the board of trade to contracts of sale of a commodity for future delivery (or options on such contracts)—*

*(1) that have—*

*(A) a nearly inexhaustible deliverable supply;*

*(B) a deliverable supply that is sufficiently large, and a cash market sufficiently liquid, to render any contract traded on the commodity highly unlikely to be susceptible to the threat of manipulation; or*

*(C) no cash market;*

*(2) that are entered into only between persons that are eligible contract participants at the time at which the persons enter into the contract; and*

*(3) that are not contracts of sale (or options on the contract) for future delivery of any security, including any group or index of securities or any interest in, or interest that is based on the value of, any security.*

(c) *ANTIMANIPULATION REQUIREMENTS.—A party to a futures contract or related option that is traded on an exempt board of trade shall be subject to sections 4b, 4o, 6(c), and 9(a)(2), and the Commission shall enforce those provisions with respect to any such trading.*

(d) *PRICE DISCOVERY.—If the Commission finds that an exempt board of trade is a significant source of price discovery for any underlying commodity in any transaction traded on or through the facilities of the board of trade, the board of trade shall disseminate publicly on a daily basis trading volume, opening and closing price ranges, open interest, and other trading data as appropriate to the market.*

(e) *JURISDICTION.—The Commission shall have exclusive jurisdiction over any account, agreement, or transaction involving a contract of sale of a commodity, or related option, to the extent that such account, agreement, or transaction is traded on an exempt board of trade.*

(f) *SUBSIDIARIES.—A board of trade that is designated as a contract market or registered as a derivatives transaction execution facility may operate an exempt board of trade by establishing a separate subsidiary or other legal entity and otherwise satisfying the requirements of this section.*

**SEC. 5e. SUSPENSION OR REVOCATION OF DESIGNATION AS REGISTERED ENTITY.**

*The failure of a registered entity to comply with any provision of this Act, or any regulation or order of the Commission under this Act, shall be cause for the suspension of the registered entity for a period not to exceed 180 days, or revocation of designation as a registered entity in accordance with the procedures and subject to the judicial review provided in section 6(b).*

**SEC. 5f. DESIGNATION OF SECURITIES EXCHANGES AND ASSOCIATIONS AS CONTRACT MARKETS.**

*(a) Any board of trade that is registered with the Securities and Exchange Commission as a national securities exchange, is a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934, or is an alternative trading system shall be a designated contract market in security future products if—*

*(1) such national securities exchange, national securities association, or alternative trading system lists or trades no other contracts of sale for future delivery, except for security future products;*

*(2) such national securities exchange, national securities association, or alternative trading system files written notice with the Commission in such form as the Commission, by rule, may prescribe containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of customers; and*

*(3) the registration of such national securities exchange, association, or alternative trading system is not suspended pursuant to an order by the Securities and Exchange Commission.*

*Such designation shall be effective immediately upon filing of the written notice with the Commission.*

*(b)(1) A national securities exchange, national securities association, or alternative trading system that is designated as a contract market pursuant to section 5f of this Act shall be exempt from the following provisions of this Act and the rules thereunder:*

*(A) Subsections (c), (e), and (g) of section 4c.*

*(B) Subsections (a) and (d) of section 4j.*

*(C) Section 5.*

*(D) Section 5c.*

*(E) Section 6a.*

*(F) Section 8(d).*

*(G) Section 8e.*

*(H) Section 9(f).*

*(I) Section 16.*

*(J) Section 22(b).*

*(2)(A) Except as provided in subparagraph (B), but notwithstanding any other provision of this Act, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any designated contract market in security futures subject to the designation requirement of this section from any provision of this Act or of any rule or regulation thereunder, to the extent such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.*

*(B) The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section is*

granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

**SEC. 5g. PRIVACY.**

(a) *TREATMENT AS FINANCIAL INSTITUTIONS.*—Notwithstanding section 509(3)(B) of the Gramm-Leach-Bliley Act, any person or entity that is subject to the jurisdiction of the Commission under this Act with respect to any financial activity shall be treated as a financial institution for purposes of title V of such Act with respect to such financial activity.

(b) *TREATMENT OF CFTC AS FEDERAL FUNCTIONAL REGULATOR.*—For purposes of title V of such Act, the Commodity Futures Trading Commission shall be treated as a Federal functional regulator within the meaning of section 509(2) of such Act and shall prescribe regulations under such title within 6 months after the date of enactment of this section.

SEC. 6. (a) Any [board of trade desiring to be designated a “contract market” shall make application to the Commission for such designation] *person desiring to be designated or registered as a contract market or derivatives transaction execution facility shall make application to the Commission for such designation or registration and accompany the same with a showing that it complies with the [above conditions] conditions set forth in this Act, and with a sufficient assurance that it will continue to comply with the [above requirements] the requirements of this Act.* The Commission shall approve or deny an application for [designation as a contract market within one year] *designation or registration as a contract market or derivatives transaction execution facility within 180 days* of the filing of the application. If the Commission notifies the [board of trade] *person* that its application is materially incomplete and specifies the deficiencies in the application, the running of the [one-year period] *180-day period* shall be stayed from the time of such notification until the application is resubmitted in completed form: *Provided*, That the Commission shall have not less than sixty days to approve or deny the application from the time the application is resubmitted in completed form. If the Commission denies an application, it shall specify the grounds for the denial. In the event of a refusal to [designate as a “contract market” any board of trade that has made application therefor, such board of trade] *designate or register as a contract market or derivatives transaction execution facility any person that has made application therefor, such person* shall be afforded an opportunity for a hearing on the record before the Commission, with the right to appeal an adverse decision after such hearing to the court of appeals as provided for in other cases in subsection (b) of this section.

(b) The Commission is authorized to suspend for a period not to exceed six months or to revoke the [designation of any board of trade as a “contract market” upon] *designation or registration of any contract market or derivatives transaction execution facility* on a showing that such [board of trade] *contract market or derivatives transaction execution facility* is not enforcing or has not enforced its rules of government made a condition of its [designation as set forth in section 5 of this Act] *designation or registration as set forth in section 5, 5a, 5b, or 5f* or that such [board of trade] *contract market or derivatives transaction execution facility*, or any director, officer, agent, or employee thereof, otherwise is violating or

has violated any of the provisions of this Act or any of the rules, regulations, or orders of the Commission or the Commission thereunder. Such suspension or revocation shall only be after a notice to the officers of the **[board of trade]** *contract market or derivatives transaction execution facility* affected and upon a hearing on the record: *Provided*, That such suspension or revocation shall be final and conclusive, unless within fifteen days after such suspension or revocation by the Commission such **[board of trade]** *person* appeals to the court of appeals for the circuit in which it has its principal place of business, by filing with the clerk of such court a written petition praying that the order of the Commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such **[board of trade]** *person* will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Commission and file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. The testimony and evidence taken or submitted before the Commission, duly filed as aforesaid as a part of the record, shall be considered by the court of appeals as the evidence in the case. Such a court may affirm or set aside the order of the Commission or may direct it to modify its order. No such order of the Commission shall be modified or set aside by the court of appeals unless it is shown by the **[board of trade]** *person* that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such **[board of trade]** *person* for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of the Commission.

(c) If the Commission has reason to believe that any person (other than a **[contract market]** *registered entity*) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any **[contract market]** *registered entity*, or has willfully made any false or misleading statement of a material fact in any registration application or any report filed with the Commission under this Act, or willfully omitted to state in any such application or report any material fact which is required to be stated therein, or otherwise is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Commission or the Commission thereunder, it may serve upon such person a complaint stating its charges in that respect, which complaint shall have attached or shall contain therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made prohibiting him from trading on or subject to the rules of any **[contract market]** *registered entity*, and directing that all **[contract markets]** *registered entities* refuse all **[trading]** privileges to such person, until further notice of the Commission and to show cause why the registration of such person, if registered with the Commission in any capacity, should not be suspended or revoked. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the Commission or before an Administrative Law Judge designated by the Commission, which Administrative Law Judge shall

cause all evidence to be reduced to writing and forthwith transmit the same to the Commission. For the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for the purpose of any action taken under section 12(f), any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in the fifth sentence of this subsection) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in the United States, any State or any foreign country or jurisdiction at any designated place of hearing. A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found. Upon evidence received, the Commission may (1) prohibit such person from trading on or subject to the rules of any **contract market** *registered entity* and require all **contract markets** *registered entities* to refuse such person all **trading** privileges thereon for such period as may be specified in the order, (2) if such person is registered with the Commission in any capacity, suspend, for a period not to exceed six months, or revoke, the registration of such person, (3) assess such person a civil penalty of not more than the higher of \$100,000 or triple the monetary gain to such person for each such violation and (4) require restitution to customers of damages proximately caused by violations of such persons. Notice of such order shall be sent forthwith by registered mail or by certified mail or delivered to the offending person and to the governing boards of said **contract markets** *registered entities*. After the issuance of the order by the Commission, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States court of appeals of the circuit in which the petitioner is doing business, or



in the case of an order denying registration, the circuit in which the petitioner's principal place of business listed on petitioner's application for registration is located, a written petition, within fifteen days after the notice of such order is given to the offending person praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and thereupon the Commission shall file in the court the record theretofore made, as provided in section 2112 of title 28, United States Code. Upon the filing of the petition the court shall have jurisdiction to affirm, to set aside, or modify the order of the Commission, and the findings of the Commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.

(d) If any person (other than a **contract market** *registered entity*) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any **contract market** *registered entity*, or otherwise is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Commission or the commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in subsection (c), make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than the higher of \$100,000 or triple the monetary gain to such person, or imprisoned for not less than six months nor more than one year, or both, except that if such failure or refusal to obey or comply with such order involves any offense within paragraph (a) or (b) of section 9 of this Act, such person shall be guilty of a felony and, upon conviction thereof, shall be subject to the penalties of said paragraph 9(a) or 9(b): *Provided*, That any such cease and desist order against any respondent in any case of manipulation of, or attempt to manipulate, the price of any commodity shall be issued only in conjunction with an order issued against such respondent under subsection (c). Each day during which such failure or refusal to obey or comply with such order continues shall be deemed a separate offense.

(e)(1) In determining the amount of the money penalty assessed under subsection (c), the Commission shall consider the appropriateness of such penalty to the gravity of the violation.

(2) Unless the person against whom a money penalty is assessed under subsection (c) shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for payment of such penalty that either an appeal as authorized by subsection (c) has been taken or payment of the full amount of the penalty then due has been made, at the end of such fifteen-day period and until such person shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made—

(A) such person shall be prohibited automatically from **trading on all contract markets** *the privileges of all registered entities*; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

(3) If a person against whom a money penalty is assessed under subsection (c) takes an appeal and if the Commission prevails or the appeal is dismissed, unless such person shows to the satisfaction of the Commission that payment of the full amount of the penalty then due has been made by the end of thirty days from the date of entry of judgment on the appeal—

(A) such person shall be prohibited automatically from [trading on all contract markets] *the privileges of all registered entities*; and

\* \* \* \* \*

(g) *The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission pursuant to subsections (c) and (d) of this section against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to section 4k(6), or any board of trade designated as a contract market pursuant to section 5f.*

SEC. 6a. (a) No board of trade which has been [designated as a “contract market” shall] *designated or registered as a contract market or a derivatives transaction execution facility* exclude from membership in, and all privileges on, such board of trade, any association or corporation engaged in cash commodity business having adequate financial responsibility which is organized under the cooperative laws of any State, or which has been recognized as a cooperative association of producers by the United States Government or by any agency thereof, if such association or corporation complies and agrees to comply with such terms and conditions as are or may be imposed lawfully upon other members of such board, and as are or may be imposed lawfully upon a cooperative association of producers engaged in cash commodity business, unless such board of trade is authorized by the Commission to exclude such association or corporation from membership and privileges after hearing held upon at least three days’ notice subsequent to the filing of complaint by the board of trade: *Provided, however,* That if any such association or corporation shall fail to meet its obligations with any established clearing house or clearing agency of any contract market, such association or corporation shall be ipso facto debarred from further trading on such contract market, except such trading as may be necessary to close open trades and to discharge existing contracts in accordance with the rules of such contract market applicable in such cases. Such Commission may prescribe that such association or corporation shall have and retain membership and privileges, with or without imposing conditions, or it may permit such board of trade immediately to bar such association or corporation from membership and privileges. Any order of said Commission entered hereunder shall be reviewable by the court of appeals for the circuit in which such association or corporation, or such board of trade, has its principal place of business, on written petition either of such association or corporation, or of such board of trade, under the procedure provided in section 6(b) of this Act, but such order shall not be stayed by the court pending review.

(b) No rule of any board of trade **【designated as a contract market】** *designated or registered as a contract market or a derivatives transaction execution facility* shall forbid or be construed to forbid the payment of compensation on a commodity-unit basis, or otherwise, by any federated cooperative association to its regional member-associations for services rendered or to be rendered in connection with any organization work, educational activity, or procurement of patronage, provided no part of any such compensation is returned to patrons (whether members or nonmembers) of such cooperative association, or of its regional or local member-associations, otherwise than as a dividend on capital stock or as a patronage dividend out of the net earnings or surplus of such federated cooperative association.

SEC. 6b. If any **【contract market】** *registered entity* is not enforcing or has not enforced its rules of government made a condition of its **【designation as set forth in section 5 of this Act】** *designation or registration as set forth in section 5, 5a, 5b, or 5f*, or if any **【contract market】** *registered entity*, or any director, officer, agent, or employee of any **【contract market】** *registered entity* otherwise is violating or has violated any of the provisions of this Act or any of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing on the record and subject to appeal as in other cases provided for in section 6(b) of this Act, make and enter an order directing that such **【contract market】** *registered entity*, director, officer, agent, or employee shall cease and desist from such violation, and assess a civil penalty of not more than \$500,000 for each such violation. If such **【contract market】** *registered entity*, director, officer, agent, or employee, after the entry of such a cease and desist order and the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such **【contract market】** *registered entity*, director, officer, agent, or employee shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500,000 or imprisoned for not less than six months nor more than one year, or both. Each day during which such failure or refusal to obey such cease and desist order continues shall be deemed a separate offense. If the offending **【contract market】** *registered entity* or other person upon whom such penalty is imposed, after the lapse of the period allowed for appeal or after the affirmance of such penalty, shall fail to pay such penalty, the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court. In determining the amount of the money penalty assessed under this section, the Commission shall consider the gravity of the offense, and in the case of a **【contract market】** *registered entity* shall further consider whether the amount of the penalty will materially impair **【the contract market's ability】** *the ability of the registered entity* to carry on its operations and duties.

SEC. 6c. (a) Whenever it shall appear to the Commission that any **【contract market】** *registered entity* or other person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this Act or any rule, regulation, or order thereunder, or is restraining trading in any commodity for future delivery, the Commission may bring an action in the proper

district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such act or practice, or to enforce compliance with this Act, or any rule, regulation or order thereunder, and said courts shall have jurisdiction to entertain such actions: *Provided*, That no restraining order (other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property, and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate) or injunction for violation of the provisions of this Act shall be issued ex parte by said court.

\* \* \* \* \*

*(h) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to section 4k(6), or any board of trade designated as a contract market pursuant to section 5f.*

SEC. 6d. (1) Whenever it shall appear to the attorney general of any State, the administrator of the securities laws of any State, or such other official as a State may designate, that the interests of the residents of that State have been, are being, or may be threatened or adversely affected because any person (other than a contract market, *derivatives transaction execution facility*, clearinghouse, floor broker, or floor trader) has engaged in, is engaging or is about to engage in, any act or practice constituting a violation of any provision of this Act or any rule, regulation, or order of the Commission thereunder, the State may bring a suit in equity or an action at law on behalf of its residents to enjoin such act or practice, to enforce compliance with this Act, or any rule, regulation, or order of the Commission thereunder, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

\* \* \* \* \*

SEC. 7. Any **[board of trade]** *person* that has been designated or registered a **[contract market]** *registered entity* in the manner herein provided may have such designation or registration vacated and set aside by giving notice in writing to the Commission requesting that its designation or registration as a **[contract market]** *registered entity* be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation or registration shall take effect. Upon receipt of such notice the Commission shall forthwith order the vacation of the **[designation of such board of trade as a contract market]** *designation or registration of the registered entity*, effective upon the day named in the notice, and shall forthwith send a copy of the notice and its order to all other **[contract markets]** *registered entities*.

From and after the date upon which the vacation became effective the said **board of trade** *person* can thereafter be **designated** again a contract market *designated or registered again a registered entity* by making application to the Commission in the manner herein provided for an original application.

SEC. 8. (a)(1) \* \* \*

\* \* \* \* \*

(3) *The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to section 4k(6), or any board of trade designated as a contract market pursuant to section 5f.*

\* \* \* \* \*

(c) The Commission may make or issue such reports as it deems necessary, or such opinions or orders as may be required under other provisions of law, relative to the conduct of any **board of trade** *registered entity* or to the transactions of any person found guilty of violating the provisions of this Act or the rules, regulations, or orders of the Commission thereunder in proceedings brought under section 6 of this Act. In any such report or opinion, the Commission may set forth the facts as to any actual transaction or any information referred to in subsection (b) of this section, if such facts or information have previously been disclosed publicly in connection with a congressional proceeding, or in an administrative or judicial proceeding brought under this Act.

\* \* \* \* \*

SEC. 8a. The Commission is authorized—

(1) \* \* \*

(2) upon notice, but without a hearing and pursuant to such rules, regulations, or orders as the Commission may adopt, to refuse to register, to register conditionally, or to suspend or place restrictions upon the registration of, any person and with such a hearing as may be appropriate to revoke the registration of any person—

(A) \* \* \*

\* \* \* \* \*

(F) if such person is subject to an outstanding order of the Commission denying **trading** privileges on any **contract market** *registered entity* to such person, denying, suspending, or revoking such person's membership in any **contract market** *registered entity* or registered futures association, or barring or suspending such person from being associated with a registrant under this Act or with a member of a **contract market** *registered entity* or with a member of a registered futures association;

\* \* \* \* \*

(3) to refuse to register or to register conditionally any person, if it is found, after opportunity for hearing, that—

(A) \* \* \*

\* \* \* \* \*

(J) such person is subject to an outstanding order denying, suspending, or expelling such person from membership in a **【contract market】** *registered entity*, a registered futures association, any other self-regulatory organization, or any foreign regulatory body that the Commission recognizes as having a comparable regulatory program or barring or suspending such person from being associated with any member or members of such **【contract market】** *registered entity*, association, self-regulatory organization, or foreign regulatory body;

\* \* \* \* \*

(4) in accordance with the procedure provided for in section 6(c) of this Act, to suspend, revoke, or place restrictions upon the registration of any person registered under this Act if cause exists under paragraph (3) of this section which would warrant a refusal of registration of such person, and to suspend or revoke the registration of any futures commission merchant or introducing broker who shall knowingly accept any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any **【contract market】** *registered entity* from any person if such person has been denied trading privileges on any **【contract market】** *registered entity* by order of the Commission under section 6(c) of this Act and the period of denial specified in such order shall not have expired: *Provided*, That such person may appeal from a decision to suspend, revoke, or place restrictions upon registration made pursuant to this paragraph in the manner provided in section 6(c) of this Act;

\* \* \* \* \*

(6) to communicate to the proper committee or officer of any **【contract market】** *registered entity*, registered futures association, or self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934, notwithstanding the provisions of section 8 of this Act, the full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgment of the Commission disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors, or which is necessary or appropriate to effectuate the purposes of this Act: *Provided*, That any information furnished by the Commission under this paragraph shall not be disclosed by such **【contract market】** *registered entity*, registered futures association, or self-regulatory organization except in any self-regulatory action or proceeding;

(7) to alter or supplement the rules of a **【contract market】** *registered entity* insofar as necessary or appropriate by rule or regulation or by order, if after making the appropriate request in writing to a **【contract market】** *registered entity* that such **【contract market】** *registered entity* effect on its own behalf specified changes in its rules and practices, and after appropriate notice and opportunity for hearing, the Commission de-

termines that such **[contract market]** *registered entity* has not made the changes so required, and that such changes are necessary or appropriate for the protection of persons producing, handling, processing, or consuming any commodity traded for future delivery on such **[contract market]** *registered entity*, or the product or byproduct thereof, or for the protection of traders or to insure fair dealing in commodities traded for future delivery on such **[contract market]** *registered entity*. Such rules, regulations, or orders may specify changes with respect to such matters as—

(A) terms or conditions in contracts of sale to be executed on or subject to the rules of such **[contract market]** *registered entity*;

\* \* \* \* \*

(8) to make and promulgate such rules and regulations with respect to those persons registered under this Act, who are not members of a **[contract market]** *registered entity*, as in the judgment of the Commission are reasonably necessary to protect the public interest and promote just and equitable principles of trade, including but not limited to the manner, method, and place of soliciting business, including the content of such solicitation;

(9) to direct the **[contract market]** *registered entity*, whenever it has reason to believe that an emergency exists, to take such action as in the Commission's judgment is necessary to maintain or restore orderly trading in or liquidation of any futures contract, including, but not limited to, the setting of temporary emergency margin levels on any futures contract, and the fixing of limits that may apply to a market position acquired in good faith prior to the effective date of the Commission's action. The term "emergency" as used herein shall mean, in addition to threatened or actual market manipulations and corners, any act of the United States or a foreign government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity. Any action taken by the Commission under this paragraph shall be subject to review only in the United States Court of Appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. Such review shall be based upon an examination of all the information before the Commission at the time the determination was made. The court reviewing the Commission's action shall not enter a stay or order of mandamus unless it has determined, after notice and hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Nothing herein shall be deemed to limit the meaning or interpretation given by a **[contract market]** *registered entity* to the terms "market emergency", "emergency", or equivalent language in its own bylaws, rules, regulations, or resolutions;

\* \* \* \* \*

SEC. 8b. It shall be unlawful for any person, against whom there is outstanding any order of the Commission prohibiting him from trading on or subject to the rules of any **contract market** *registered entity*, to make or cause to be made in contravention of such order, any contract for future delivery of any commodity, on or subject to the rules of any **contract market** *registered entity*.

SEC. 8c. (a)

\* \* \* \* \*

(e)(1) The Commission shall issue regulations requiring each contract market to establish and make available to the public a schedule of major violations of any rule within the disciplinary jurisdiction of such **contract market** *registered entity*.

\* \* \* \* \*

#### SEC. 8e. COMMISSION OVERSIGHT; DEFICIENCY ORDERS.

(a) ASSESSMENTS.—At least once every two years, to the extent practicable, the Commission shall assess whether the trade monitoring system of each **contract market** *registered entity* satisfies **section 5a(b)** *sections 5 through 5c*.

(b) DEFICIENCY ORDERS.—

(1) CAUSES.—The Commission may issue a proposed deficiency order in accordance with paragraph (2), or take such other administrative or enforcement action as the Commission determines is appropriate, if, based on its assessment or on other information, the Commission at any time has reason to believe that a **contract market's** trade monitoring system implemented pursuant to **section 5a(b)** *the trade monitoring system of a registered entity implemented pursuant to sections 5 through 5c* does not satisfy one or more of the requirements of such section.

\* \* \* \* \*

(2) CONTENTS.—A proposed deficiency order issued under this subsection shall specify—

(A) the deficiencies the Commission has reason to believe exist in the trade monitoring system of the **contract market** *registered entity* and a statement of reasons supporting the Commission's belief that those deficiencies exist;

(B) the corrective action that the Commission believes that the **contract market** *registered entity* must take and an acceptable timetable for such corrective action; and

(C) a date, not less than twenty days from the date of issuance of the proposed deficiency order, when such deficiency order will become final, subject to subsection (d).

(3) REMEDIES.—On becoming final, the Commission deficiency order may—

**[(A) require the contract market to—**

**[(i) institute appropriate improvements in its trade monitoring system necessary to correct the deficiencies noted therein;**

**[(ii) satisfy stated objective performance criteria to correct such deficiencies;**

**[(iii) upgrade or reconfigure existing systems for collecting or processing relevant data on trading and**



trader or broker activity, including, where appropriate, the commitment of additional resources; or

[(B) revoke any exemption of the contract market from the regulations prohibiting the privilege of dual trading under section 4j(a), if the deficiency noted in such deficiency order relates to—

[(i) the audit trail system the contract market is required to maintain under paragraph (2), (3), or (4) of section 5a(b); or

[(ii) the prevention, detection, or disciplining of violations attributable to such trading at such, subject to the standards, exceptions, and duration provisions of section 4j(a); or

[(C) take any combination of the actions described in subparagraphs (A) and (B).]

(3) *REMEDIES.*—*On becoming final, the Commission deficiency order may require the registered entity to—*

*(A) institute appropriate improvements in its trade monitoring system necessary to correct the deficiencies in the order;*

*(B) satisfy stated objective performance criteria to correct the deficiencies;*

*(C) upgrade or reconfigure existing systems for collecting or processing relevant data on trading and trader or broker activity, including, where appropriate, the commitment of additional resources.*

(4) *REMOVAL.*—If the Commission finds, after notice and opportunity for a hearing on the record prior to such deficiency order becoming final, that a named officer, director, committee member, or employee of such [contract market] *registered entity* has willfully—

*(A) violated this Act, the rules or regulations of the Commission thereunder, or the rules of such [contract market] registered entity;*

*(B) abused the authority of such person; or*

*(C) without reasonable justification or excuse, failed to enforce compliance with any provision of the rules of such [contract market] registered entity by any member or person associated with a member thereof,*

the Commission may issue a deficiency order under this section to remove such officer, director, committee member, or employee.

(5) **[DESIGNATION AS CONTRACT MARKET]** *DESIGNATION OR REGISTRATION AS REGISTERED ENTITY.*—Notwithstanding section 6, during the period that a proposed or final deficiency order under this section is in effect, the Commission may refrain from approving any application for designation or registration as a [contract market] *registered entity* made by the [board of trade] *person* whose [contract market] *registered entity* is the subject of such deficiency order.

(6) *DELEGATION.*—The Commission shall not delegate the authority to issue deficiency orders under this subsection.

(c) **RESCISSION, MODIFICATION, OR DELAY OF DEFICIENCY ORDERS.**—Before any proposed deficiency order issued by the Commis-

sion under subsection (b) may become final, the Commission shall—

(1) provide the affected **contract market** *registered entity* with an opportunity for a hearing through submission of written data, views, or arguments and, under terms set by the Commission at the request of the **contract market** *registered entity*, through an oral presentation of views and comments to the Commission, in order to petition the Commission to rescind, modify, or delay such deficiency order; and

(2) rule on such petition, not less than twenty days before the deficiency order takes effect, making findings, as appropriate, as to whether—

(A) the deficiencies cited by the Commission have been corrected or are being corrected under an expeditious timetable acceptable to the Commission;

(B) the trade monitoring system of the **contract market** *registered entity* is deficient as noted in the deficiency order; or

(C) the timetable for corrective action by the **contract market** *registered entity* in the proposed deficiency order, and the particular corrective action proposed, is appropriate in light of the deficiencies noted and the purposes of this Act.

(d) **PENALTIES.**—Violation of a final deficiency order issued under subsection (c) shall be considered a violation of an order of the Commission for purposes of—

(1) establishing liability and assessing penalties against a **contract market** *registered entity* or any director, officer, agent, or employee thereof under section 6b or 6c; or

(2) initiating proceedings under section **5b** 5e or 6(a).

(e) **JUDICIAL REVIEW.**—

(1) **PERSONS.**—Any person, other than a **contract market** *registered entity*, aggrieved by a deficiency order issued under subsection (b)(4), may obtain review of such deficiency order when issued by the Commission under the terms and conditions in section 6(b).

(2) **CONTRACT MARKETS REGISTERED ENTITIES.**—Any **contract market** *registered entity* that has petitioned the Commission to rescind, modify, or delay any proposed deficiency order issued under subsection (b) may obtain judicial review of any final such deficiency order only in the United States Court of Appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, under the standards applicable to rulemaking proceedings under section 553 of title 5, United States Code.

**SEC. 9.** (a) It shall be a felony punishable by a fine of not more than \$1,000,000 (or \$500,000 in the case of a person who is an individual) or imprisonment for not more than five years, or both, together with the costs of prosecution, for:

(1) \* \* \*

(2) Any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any **contract market** *registered entity*, or to corner or attempt to corner any such

commodity or knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, or knowingly to violate the provisions of section 4, section 4b, subsections (a) through (e) of subsection 4c, section 4h, section 4o(1), or section 19.

(3) Any person knowingly to make, or cause to be made, any statement in any application, report, or document required to be filed under this Act or any rule or regulation thereunder or any undertaking contained in a registration statement required under this Act, or by any **contract market** *registered entity* or registered futures association in connection with an application for membership or participation therein or to become associated with a member thereof, which statement was false or misleading with respect to any material fact, or knowingly to omit any material fact required to be stated therein or necessary to make the statements therein not misleading.

(4) Any person willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a **contract market** *registered entity*, board of trade, or futures association designated or registered under this Act acting in furtherance of its official duties under this Act.

\* \* \* \* \*

(f) It shall be a felony for any person—

(1) who is an employee, member of the governing board, or member of any committee of a board of trade, **contract market** *registered entity*, or registered futures association, in violation of a regulation issued by the Commission, willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon on the basis of, or willfully and knowingly to disclose for any purpose inconsistent with the performance of such person's official duties as an employee or member, any material nonpublic information obtained through special access related to the performance of such duties.

(2) willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon on the basis of any material nonpublic information that such person knows was obtained in violation of paragraph (1) from an employee, member of the governing board, or member of any committee of a board of trade, **contract market** *registered entity*, or registered futures association.

Such felony shall be punishable by a fine of not more than \$500,000, plus the amount of any profits realized from such trading or disclosure made in violation of this subsection, or imprisonment

for not more than five years, or both, together with the costs of prosecution.

\* \* \* \* \*

SEC. 12. (a) \* \* \*

\* \* \* \* \*

(d) There are authorized to be appropriated such sums as are necessary to carry out this Act for each of fiscal years 1995 through **[2000]** 2005.

(e) Nothing in this Act shall supersede or preempt—

(1) criminal prosecution under any Federal criminal statute;

**[(2) the application of any Federal or State statute, including any rule or regulation thereunder, to any transaction in or involving any commodity, product, right, service, or interest (A) that is not conducted on or subject to the rules of a contract market, or, in the case of any State or local law that prohibits or regulates gaming or the operation of “bucket shops” (other than antifraud provisions of general applicability), that is not a transaction or class of transactions that has received or is covered by the terms of any exemption previously granted by the Commission under subsection (c) of section 4 of this Act, or (B) (except as otherwise specified by the Commission by rule or regulation) that is not conducted on or subject to the rules of any board of trade, exchange, or market located outside the United States, its territories or possessions, or (C) that is not subject to regulation by the Commission under section 4c or 19 of this Act; or]**

*(2) the application of any Federal or State law to an agreement, contract, or transaction in or involving any commodity, product, right, service, or interest, except that this Act shall supersede and preempt—*

*(A) any Federal or State law, other than antifraud provisions of general applicability and the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), as such Federal or State law applies to any such agreement, contract, or transaction—*

*(i) that is conducted on or subject to the rules of a registered entity or exempt board of trade;*

*(ii) that is conducted on or subject to the rules of any board of trade, exchange, or market located outside the United States, or any territory or possession of the United States (in accordance with any terms or conditions specified by the Commission by regulation); or*

*(iii) that is subject to regulation by the Commission under section 4c or 19; and*

*(B) any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than antifraud provisions of general applicability) in the case of—*

*(i) an electronic trading facility under section 2(e); or*

*(ii) an agreement, contract, or transaction that is excluded or exempt under section 2(c), 2(d), 2(f), or 2(h) or is covered by the terms of an exemption granted by the Commission under section 4(c) (regardless of*

*whether any such agreement, contract, or transaction is otherwise subject to this Act); or*

\* \* \* \* \*

SEC. 14. (a)(1) Any person complaining of any violation of any provision of this Act, or any rule, regulation, or order issued pursuant to this Act, by any person who is registered under this Act may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding—

(A) \* \* \*

(B) in the case of any action arising from a willful and intentional violation in the execution of an order on the floor of a **【contract market】** *registered entity*, punitive or exemplary damages equal to no more than two times the amount of such actual damages. If an award of punitive or exemplary damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) for the floor broker's violation, such futures commission merchant may be required to satisfy such award if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation.

\* \* \* \* \*

(f) Unless the party against whom a reparation order has been issued shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for compliance with such order that either an appeal as herein authorized has been taken or payment of the full amount of the order (or any agreed settlement thereof) has been made, such party shall be prohibited automatically from trading on all **【contract markets】** *registered entities* and, if the party is registered with the Commission, such registration shall be suspended automatically at the expiration of such fifteen-day period until such party shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made: *Provided*, That if on appeal the appellee prevails or if the appeal is dismissed, the automatic prohibition against trading and suspension of registration shall become effective at the expiration of thirty days from the date of judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction, the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied.

\* \* \* \* \*

#### **【SEC. 15. The Commission】**

#### **SEC. 15. CONSIDERATION OF COSTS AND BENEFITS AND ANTITRUST LAWS.**

##### **(a) COSTS AND BENEFITS.—**

(1) *IN GENERAL.—Before promulgating a regulation under this Act or issuing an order (except as provided in paragraph (3)), the Commission shall consider the costs and benefits of the action of the Commission.*

(2) *CONSIDERATIONS.*—*The costs and benefits of the proposed Commission action shall be evaluated in light of—*

(A) *considerations of protection of market participants and the public;*

(B) *considerations of the efficiency, competitiveness, and financial integrity of futures markets;*

(C) *considerations of price discovery;*

(D) *considerations of sound risk management practices; and*

(E) *other public interest considerations.*

(3) *APPLICABILITY.*—*This subsection does not apply to the following actions of the Commission:*

(A) *An order that initiates, is part of, or is the result of an adjudicatory or investigative process of the Commission.*

(B) *An emergency action.*

(C) *A finding of fact regarding compliance with a requirement of the Commission.*

(b) *ANTITRUST LAWS.*—*The Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this Act, as well as the policies and purposes of this Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of this Act.*

SEC. 16. (a) \* \* \*

\* \* \* \* \*

(e) *The provisions of this section shall not apply to investigations involving any security underlying a security future product.*

SEC. 17. (a) \* \* \*

(b) *An applicant association shall not be registered as a futures association unless the Commission finds, under standards established by the Commission, that—*

(1) \* \* \*

(2) *the rules of the association provide that any person registered under this Act, [contract market] registered entity, or any other person designated pursuant to the rules of the Commission as eligible for membership may become a member of such association, except such as are excluded pursuant to paragraph (3) or (4) of this subsection, or a rule of the association permitted under this paragraph. The rules of the association may restrict membership in such association on such specified basis relating to the type of business done by its members, or on such other specified and appropriate basis, as appears to the Commission to be necessary or appropriate in the public interest and to carry out the purpose of this section. Rules adopted by the association may provide that the association may, unless the Commission directs otherwise in cases in which the Commission finds it appropriate in the public interest so to direct, deny admission to, or refuse to continue in such association any person if (i) such person, whether prior or subsequent to becoming registered as such, or (ii) any person associated within the meaning of “associated person” as set forth in section 4k of this Act, whether prior or subsequent to becoming*

so associated, has been and is suspended or expelled from a **【contract market】 registered entity** or has been and is barred or suspended from being associated with all members of such **【contract market】 registered entity**, for violation of any rule of such **【contract market】 registered entity**;

(3) the rules of the association provide that, except with the approval or at the direction of the Commission in cases in which the Commission finds it appropriate in the public interest so to approve or direct, no person shall be admitted to or continued in membership in such association, if such person—

(A) has been and is suspended or expelled from a registered futures association or from a **【contract market】 registered entity** or has been and is barred or suspended from being associated with all members of such association or from being associated with all members of such **【contract market】 registered entity**, for violation of any rule of such association or **【contract market】 registered entity** which prohibits any act or transaction constituting conduct inconsistent with just and equitable principles of trade, or requires any act the omission of which constitutes conduct inconsistent with just and equitable principles of trade;

(B) is subject to an order of the Commission denying, suspending, or revoking his registration pursuant to section 6(c) of this Act, or expelling or suspending him from membership in a registered futures association or a **【contract market】 registered entity**, or barring or suspending him from being associated with a futures commission merchant;

(C) whether prior or subsequent to becoming a member, by his conduct while associated with a member, was a cause of any suspension, expulsion, or order of the character described in clause (A) or (B) which is in effect with respect to such member, and in entering such a suspension, expulsion, or order, the Commission or any such **【contract market】 registered entity** or association shall have jurisdiction to determine whether or not any person was a cause thereof; or

\* \* \* \* \*

(10) the rules of the association provide a fair, equitable, and expeditious procedure through arbitration or otherwise for the settlement of customers' claims and grievances against any member or employee thereof: *Provided*, That (A) the use of such procedure by a customer shall be voluntary, (B) the term "customer" as used in this paragraph shall not include another member of the association, and (C) in the case of a claim arising from a violation in the execution of an order on the floor of a **【contract market】 registered entity**, such procedure shall provide, to the extent appropriate—

(i) \* \* \*

\* \* \* \* \*

(o)(1) The Commission may require any futures association registered pursuant to this section to perform any portion of the registration functions under this Act with respect to each member of the association other than a **【contract market】 registered entity**

and with respect to each associated person of such member, in accordance with rules, notwithstanding any other provision of law, adopted by such futures association and submitted to the Commission pursuant to section 17(j) of this Act, and subject to the provisions of this Act applicable to registrations granted by the Commission.

\* \* \* \* \*

(q)(1) The Commission shall issue regulations requiring each registered futures association to establish and make available to the public a schedule of major violations of any rule within the disciplinary jurisdiction of such registered futures association.

(2) The regulations issued by the Commission pursuant to this subsection shall prohibit, for a period of time to be determined by the Commission, any member of a registered futures association who is found to have committed any major violation from service on the governing board of any registered futures association or **contract market** *registered entity*, or on any disciplinary committee thereof.

\* \* \* \* \*

SEC. 22. (a)(1) Any person (other than a **contract market**, clearing organization of a contract market, licensed board of trade, *registered entity* or a derivatives clearing organization exempt from registration pursuant to section 5b(b) or registered futures association) who violates this Act or who willfully aids, abets, counsels, induces, or procures the commission of a violation of this Act shall be liable for actual damages resulting from one or more of the transactions referred to in subparagraphs (A) through (D) of this paragraph and caused by such violation to any other person—

(A) \* \* \*

(C) who purchased from or sold to such person or placed through such person an order for the purchase or sale of—

(i) an option subject to section 4c of this Act (other than an option purchased or sold on a **contract market** *registered entity* or other board of trade);

\* \* \* \* \*

(2) Except as provided in subsection (b), the rights of action authorized by this subsection and by sections **5a(11)**, **5(d)(13)**, **5b(b)(1)(E)**, 14, and 17(b)(10) of this Act shall be the exclusive remedies under this Act available to any person who sustains loss as a result of any alleged violation of this Act. Nothing in this subsection shall limit or abridge the rights of the parties to agree in advance of a dispute upon any forum for resolving claims under this section, including arbitration.

(3) In any action arising from a violation in the execution of an order on the floor of a **contract market** *registered entity*, the person referred to in paragraph (1) shall be liable for—

(A) \* \* \*

\* \* \* \* \*

(4) **CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.**—No agreement, contract, or transaction a party to which is reasonably believed by another party to which to be an eligible contract participant shall be void, voidable, or unenforceable, and no such reasonably believed eligible contract participant



*shall be entitled to rescind, or recover any payment made with respect to, such an agreement, contract, or transaction, under this section based solely on the failure of the agreement, contract, or transaction to comply with the terms or conditions of an exemption or exclusion from any provision of this Act or regulations of the Commission.*

(b)(1)(A) A **contract market or clearing organization of a contract market** *registered entity* that fails to enforce any bylaw, rule, regulation, or resolution that it is required to enforce by **section 5a(8) and section 5a(9) of this Act** *sections 5 through 5c*, (B) a licensed board of trade that fails to enforce any bylaw, rule, regulation, or resolution that it is required to enforce by the Commission, or (C) any **contract market, clearing organization of a contract market, or licensed board of trade** *registered entity* that in enforcing any such bylaw, rule, regulation, or resolution violates this Act or any Commission rule, regulation, or order, shall be liable for actual damages sustained by a person who engaged in any transaction on or subject to the rules of such **contract market or licensed board of trade** *registered entity* to the extent of such person's actual losses that resulted from such transaction and were caused by such failure to enforce or enforcement of such bylaws, rules, regulations, or resolutions.

\* \* \* \* \*

(3) Any individual who, in the capacity as an officer, director, governor, committee member, or employee of **a contract market, clearing organization, licensed board of trade,** *registered entity* or a registered futures association willfully aids, abets, counsels, induces, or procures any failure by any such entity to enforce (or any violation of the Act in enforcing) any bylaw, rule, regulation, or resolution referred to in paragraph (1) or (2) of this subsection, shall be liable for actual damages sustained by a person who engaged in any transaction specified in subsection (a) of this section on, or subject to the rules of, such **contract market, licensed board of trade** *registered entity* or, in the case of an officer, director, governor, committee member, or employee of a registered futures association, any transaction specified in subsection (a) of this section, in either case to the extent of such person's actual losses that resulted from such transaction and were caused by such failure or violation.

(4) A person seeking to enforce liability under this section must establish that the **contract market, licensed board of trade, clearing organization,** *registered entity* registered futures association, officer, director, governor, committee member, or employee acted in bad faith in failing to take action or in taking such action as was taken, and that such failure or action caused the loss.

(5) The rights of action authorized by this subsection shall be the exclusive remedy under this Act available to any person who sustains a loss as a result of (A) the alleged failure by a **contract market, licensed board of trade, clearing organization,** *registered entity* or registered futures association or by any officer, director, governor, committee member, or employee to enforce any bylaw, rule, regulation, or resolution referred to in paragraph (1) or (2) of this subsection, or (B) the taking of action in enforcing any bylaw, rule, regulation, or resolution referred to in this subsection that is

alleged to have violated this Act, or any Commission rule, regulation, or order.

\* \* \* \* \*

## SECTION 402 OF THE FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991

### SEC. 402. DEFINITIONS.

For purposes of this subtitle—

(1) \* \* \*

\* \* \* \* \*

(2) CLEARING ORGANIZATION.—The term “clearing organization” means a clearinghouse, clearing association, clearing corporation, or similar organization—

(A) \* \* \*

\* \* \* \* \*

[(B) that performs clearing functions for a contract market designated pursuant to the Commodity Exchange Act.]

*(B) that is registered as a derivatives clearing organization under section 5b of the Commodity Exchange Act.*

\* \* \* \* \*

## SECURITIES EXCHANGE ACT OF 1934

\* \* \* \* \*

### TITLE I—REGULATION OF SECURITIES EXCHANGES

\* \* \* \* \*

#### DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) \* \* \*

\* \* \* \* \*

(10) The term “security” means any note, stock, treasury stock, *security future*, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or in general, any instrument commonly known as a “security”; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker’s acceptance which has a maturity at the time of issuance

of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

[(11) The term “equity security” means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.]

*(11) The term “equity security” means any stock or similar security; or any security future; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any put, call, straddle, option, or privilege on any such security; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.*

\* \* \* \* \*

(13) The terms “buy” and “purchase” each include any contract to buy, purchase, or otherwise acquire. *For security future products, such term includes any contract, agreement, or transaction for future delivery.*

(14) The terms “sale” and “sell” each include any contract to sell or otherwise dispose of. *For security future products, such term includes any contract, agreement, or transaction for future delivery.*

\* \* \* \* \*

*(55)(A) The term “security future” means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) as in effect on the date of enactment of the Futures Trading Act of 1982). The term “security future” does not include any agreement, contract, or transaction excluded under subsection (c), (d), or (f) of section 2 of the Commodity Exchange Act as in effect on the date of enactment of the Commodity Futures Modernization Act of 2000.*

*(B) The term “narrow-based security index” means an index of securities on which contracts for future delivery are not permitted under section 2(a)(1)(C) of the Commodity Exchange Act, including any interest therein or based on the value thereof.*

*(C) The term “security future product” means a security future or any put, call, straddle, option, or privilege on any security future.*

*(56)(A) The term “margin”, when used with respect to a security future product, means the amount, type, and form of collateral required to secure any extension or maintenance of credit, or the amount, type, and form of collateral required as a per-*

formance bond related to the purchase, sale, or carrying of a security future product, and all other uses of collateral related to the purchasing, selling, or carrying of a security future product.

(B) The terms “margin level” and “level of margin”, when used with respect to a security future product, mean the amount of margin required to secure any extension or maintenance of credit, or the amount of margin required as a performance bond related to the purchase, sale, or carrying of a security future product.

(C) The terms “higher margin level” and “higher level of margin”, when used with respect to a security future product, mean a margin level established by a national securities exchange registered pursuant to section 6(g) that is higher than the minimum amount established by the Commission pursuant to section 7(c)(2)(B).

\* \* \* \* \*

#### NATIONAL SECURITIES EXCHANGES

SEC. 6. (a) \* \* \*

\* \* \* \* \*

(g) NOTICE REGISTRATION OF SECURITY FUTURE PRODUCT EXCHANGES.—

(1) REGISTRATION REQUIRED.—An exchange that lists or trades security future products may be registered as a national securities exchange solely for the purposes of trading security future products if—

(A) the exchange is a board of trade, as that term is defined by the Commodity Exchange Act (7 U.S.C. 1a(2)), that has been designated a contract market by the Commodity Futures Trading Commission and is not subject to a suspension order by the Commodity Futures Trading Commission; and

(B) such exchange does not serve as a market place for transactions in securities other than—

(i) security future products; or

(ii) futures on exempted securities or groups or indexes of securities or options thereon that have been authorized under section 2(a)(1)(C) of the Commodity Exchange Act by Commodity Futures Trading Commission order.

(2) REGISTRATION BY NOTICE FILING.—

(A) FORM AND CONTENT.—An exchange required to register only because such exchange lists or trades security future products may register for purposes of this section by filing with the Commission a written notice in such form, and containing the rules of the exchange and such other information and documents concerning such exchange as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) IMMEDIATE EFFECTIVENESS.—Such registration shall be effective immediately upon filing of the written notice with the Commission, except that such registration shall

not be effective if such registration would be subject to suspension or revocation.

(C) **TERMINATION.**—Such registration shall be terminated immediately if any of the conditions for registration set forth in this subsection are no longer satisfied.

(3) **PUBLIC AVAILABILITY.**—The Commission shall make available to the public all notices it receives under this subsection.

(4) **EXEMPTION OF EXCHANGES FROM SPECIFIED PROVISIONS.**—

(A) **TRANSACTION EXEMPTIONS.**—An exchange that is registered under paragraph (1) of this subsection shall be exempt from, and shall not be required to enforce compliance by its members with, and its members shall not, solely with respect to those transactions effected on such exchange in security future products, be required to comply with, the following provisions of this title and the rules thereunder:

(i) Subsections (b)(2), (b)(3), (b)(4), (b)(7), (b)(9), (c), (d), and (e) of this section.

(ii) Subsection (a) of section 10.

(iii) Section 11.

(iv) Subsections (d), (f), and (k) of section 17.

(v) Subsections (a), (f), and (h) of section 19.

(B) **RULE CHANGE EXEMPTIONS.**—An exchange that is subject to the registration requirement of paragraph (1) of this subsection shall also be exempt from submitting proposed rule changes pursuant to section 19(b) of this title, except that—

(i) such exchange shall file proposed rule changes related to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security future products, sales practices for security future products for persons who effect transactions in security future products or rules effectuating such exchange's obligation to enforce the securities laws pursuant to section 19(b)(7);

(ii) such exchange shall file pursuant to sections 19(b)(1) and 19(b)(2) proposed rule changes related to margin, except for changes resulting in higher margin levels; and

(iii) such exchange shall file pursuant to section 19(b)(1) proposed rule changes that have been abrogated by the Commission pursuant to section 19(b)(7)(C).

(5) **ASSOCIATION COMPLIANCE WITH REQUIREMENTS.**—No exchange that is registered under paragraph (1) of this subsection shall trade any security future product until a futures association registered under section 17 of the Commodity Exchange Act has met the requirements set forth in section 15A(k)(2) of this title.

(6) **TRADING IN SECURITY FUTURE PRODUCTS.**—It shall be unlawful for any person to execute or trade a security future product until the later of—

(A) one year after the date of enactment of the Commodity Futures Modernization Act of 2000; or

(B) such date as the Federal income tax treatment applicable to the security future products permitted under this

*title are equivalent to the Federal income tax treatment of equity options traded on a national securities exchange.*

*(h) TRADING IN SECURITY FUTURE PRODUCTS.—*

*(1) TRADING ON EXCHANGE OR ASSOCIATION REQUIRED.—It shall be unlawful for any person to effect transactions in security future products that are not listed on a national securities exchange or a national securities association registered pursuant to section 15A(a).*

*(2) LISTING STANDARDS AND CONDITIONS FOR TRADING REQUIRED.—A national securities exchange or a national securities association registered pursuant to section 15A(a) may trade only security future products that (A) conform with listing standards and conditions for trading that such exchange or association files with the Commission under section 19(b), and (B) meet the criteria specified in section 2(a)(1)(D)(i) of the Commodity Exchange Act.*

*(3) REQUIREMENTS FOR LISTING STANDARDS AND CONDITIONS FOR TRADING.—Such listing standards and conditions for trading shall—*

*(A) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that any security underlying the security future, including each component security of a narrow-based security index, be registered pursuant to section 12 of this title;*

*(B) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that the security future product be cash settled;*

*(C) be no less restrictive than comparable listing standards for options traded on a national securities exchange or a national securities association registered pursuant to section 15A(a) of this title;*

*(D) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that the security future be based upon common stock and such other equity securities as the Commission and the Commodity Futures Trading Commission jointly determine appropriate;*

*(E) require that the security future product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security future products, which permits the security future product to be purchased on one market and offset on any other market on which the security future product is traded;*

*(F) require that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) effect transactions in the security future product;*

*(G) require that the security future product be subject to the prohibition against dual trading in section 4j of the Commodity Exchange Act (7 U.S.C. 6j) and the rules and regulations thereunder or the provisions of section 11(a) of this title and the rules and regulations thereunder, except to the extent otherwise permitted under this title and the rules and regulations thereunder;*

(H) require that trading in the security future product not be readily susceptible to manipulation of the price of such security future product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities;

(I) require that procedures be in place for coordinated surveillance among the market on which the security future product is traded, any market on which any security underlying the security future product is traded, and other markets on which any related security is traded to detect manipulation and insider trading;

(J) require that the market on which the security future product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (I);

(K) require that the market on which the security future product is traded has in place procedures to coordinate trading halts between such market and any market on which any security underlying the security future product is traded and other markets on which any related security is traded; and

(L) require that the margin requirements for a security future product be consistent with the margin requirements for comparable option contracts traded on an exchange registered pursuant to section 6(a) of this title and that initial and maintenance margin levels for a security future product not be lower than the levels of margin required for comparable option contracts traded on an exchange registered pursuant to section 6(a) of this title, except that nothing in this subparagraph shall be construed to prevent a national securities exchange or national securities association from requiring higher margin levels for a security future product when it deems such action to be necessary or appropriate.

(4) **AUTHORITY TO MODIFY CERTAIN LISTING STANDARD REQUIREMENTS.**—The Commission and the Commodity Futures Trading Commission, by rule, regulation, or order, may jointly modify the listing standard requirements specified in subparagraph (A), (B), or (D) of paragraph (3) to the extent such modification fosters the development of fair and orderly markets in security future products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(5) **REQUIREMENTS FOR OTHER PERSONS TRADING SECURITY FUTURE PRODUCTS.**—It shall be unlawful for any person (other than a national securities exchange or a national securities association registered pursuant to section 15A(a)) to constitute, maintain, or provide a marketplace or facilities for bringing together purchasers and sellers of security future products or to otherwise perform with respect to security future products the functions commonly performed by a stock exchange as that term is generally understood, unless a national securities association registered pursuant to section 15A(a)—

(A) has in place procedures for coordinated surveillance among such person, the market trading the securities underlying the security future products, and other markets

*trading related securities to detect manipulation and insider trading;*

*(B) has rules to require audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (A); and*

*(C) has rules to require such person to coordinate trading halts with markets trading the securities underlying the security future products and other markets trading related securities.*

(6) *DEFERRAL OF OPTIONS ON SECURITY FUTURES TRADING.—No person shall offer to enter into, enter into, or confirm the execution of any put, call, straddle, option, or privilege on a security future, except that, after 3 years after the date of enactment of this subsection, the Commission and the Commodity Futures Trading Commission may by order jointly determine to permit trading of puts, calls, straddles, options, or privileges on any security future authorized to be traded under the provisions of this Act and the Commodity Exchange Act. Before any such determination, the Commission and the Commodity Futures Trading Commission shall conduct a study of the effect of the trading of security futures on the markets for futures contracts, securities, and options and the adequacy of protections for investors and other market participants.*

#### MARGIN REQUIREMENTS

SEC. 7. (a) For the purpose of preventing the excessive use of credit for the purchase or carrying of securities, the Board of Governors of the Federal Reserve System shall, prior to the effective date of this section and from time to time thereafter, prescribe rules and regulations with respect to the amount of credit that may be initially extended and subsequently maintained on any security (other than an exempted security or a security future product). For the initial extension of credit, such rules and regulations shall be based upon the following standard: An amount not greater than whichever is the higher of—

(1) \* \* \*

\* \* \* \* \*

(c) *UNLAWFUL CREDIT EXTENSION TO CUSTOMERS.—*

(1) *PROHIBITION.—It shall be unlawful for any member of a national securities exchange or any broker or dealer, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer—*

*(A) on any security (other than an exempted security), except as provided in paragraph (2), in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the “Board”) shall prescribe under subsections (a) and (b); and*

\* \* \* \* \*

(2) *MARGIN REGULATIONS.—*

*(A) COMPLIANCE WITH MARGIN RULES REQUIRED.—It shall be unlawful for any broker, dealer, or member of a national securities exchange to, directly or indirectly, extend or*



*maintain credit to or for, or collect margin from any customer on, any security future product unless such activities comply with the rules and regulations which the Commission, after consultation with the Commodity Futures Trading Commission shall prescribe pursuant to subparagraph (B).*

(B) *CRITERIA FOR ISSUANCE OF RULES.—The Commission shall issue such regulations to establish margin requirements, including the establishment of levels of margin (initial and maintenance) and use of collateral for security future products under such terms, and at such levels, as the Commission deems appropriate—*

*(i) to preserve the financial integrity of markets trading security future products;*

*(ii) to prevent systemic risk;*

*(iii) to make consistent the margin levels (initial and maintenance) and other margin requirements between security future products and comparable options contracts traded on a national securities exchange; and*

*(iv) to ensure that the margin requirements (other than levels of margin) including the type, form, and use of collateral for security future products, are and remain consistent with the requirements established by the Federal Reserve Board, pursuant to subparagraphs (A) and (B) of paragraph (1).*

[(2)] (3) *EXCEPTION.—This subsection and the rules and regulations issued under this subsection shall not apply to any credit extended, maintained, or arranged by a member of a national securities exchange or a broker or dealer to or for a member of a national securities exchange or a registered broker or dealer—*

(A) \* \* \*

\* \* \* \* \*

#### PROHIBITION AGAINST MANIPULATION OF SECURITY PRICES

SEC. 9. (a) \* \* \*

\* \* \* \* \*

(b) It shall be unlawful for any person to effect, by use of any facility of a national securities exchange, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors—

(1) any transaction in connection with any security whereby any party to such transaction acquires (A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so[; or], or (B) any security future product on the security; or

(2) any transaction in connection with any security with relation to which he has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege[; or], or (B) such security future product delivery; or

(3) any transaction in any security for the account of any person who he has reason to believe has, and who actually has, directly or indirectly, any interest in any (A) such put, call,

straddle, option, or privilege, or (B) *such security future product* with relation to such security.

\* \* \* \* \*

(g)(1) Notwithstanding any other provision of law, the Commission shall have the authority to regulate the trading of any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency (but not, with respect to any of the foregoing, an option on a contract for future delivery *other than a security future product*).

(2) *Notwithstanding the Commodity Exchange Act, the Commission shall have the authority to regulate the trading of any security future product to the extent provided in the securities laws.*

\* \* \* \* \*

#### NATIONAL MARKET SYSTEM FOR SECURITIES; SECURITIES INFORMATION PROCESSORS

##### SEC. 11A. (a) \* \* \*

\* \* \* \* \*

##### (e) *NATIONAL MARKETS SYSTEM FOR SECURITY FUTURE PRODUCTS.*—

(1) *CONSULTATION AND COOPERATION REQUIRED.*—*With respect to security future products, the Commission and the Commodity Futures Trading Commission shall consult and cooperate so that, to the maximum extent practicable, their respective regulatory responsibilities may be fulfilled and the rules and regulations applicable to security future products may foster a national market system for security future products if the Commission and the Commodity Futures Trading Commission jointly determine that such a system would be consistent with the congressional findings in subsection (a)(1). In accordance with this objective, the Commission shall, at least 15 days prior to the issuance for public comment of any proposed rule or regulation under this section concerning security future products, consult and request the views of the Commodity Futures Trading Commission.*

(2) *APPLICATION OF RULES BY ORDER OF CFTC.*—*No rule adopted pursuant to this section shall be applied to any person with respect to the trading of security future products on an exchange that is registered under section 6(g) unless the Commodity Futures Trading Commission has issued an order directing that such rule is applicable to such persons.*

#### REGISTRATION REQUIREMENTS FOR SECURITIES

SEC. 12. (a) It shall be unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this title and the rules and regulations there-

under. *The provisions of this subsection shall not apply in respect of a security future product listed on a national securities exchange.*

\* \* \* \* \*

(g)(1) \* \* \*

\* \* \* \* \*

(5) For the purposes of this subsection the term “class” shall include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may for the purpose of this subsection define by rules and regulations the terms “total assets” and “held of record” as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. *For purposes of this subsection, a security future product shall not be considered a class of equity security of the issuer of the securities underlying the security future product.*

\* \* \* \* \*

(k) TRADING SUSPENSIONS; EMERGENCY AUTHORITY.—

(1) TRADING SUSPENSIONS.—If in its opinion the public interest and the protection of investors so require, the Commission is authorized by order—

(A) \* \* \*

\* \* \* \* \*

The action described in subparagraph (B) shall not take effect unless the Commission notifies the President of its decision and the President notifies the Commission that the President does not disapprove of such decision. *If the actions described in subparagraph (A) or (B) involve a security future product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.*

(2) EMERGENCY ORDERS.—(A) \* \* \*

\* \* \* \* \*

(B) An order of the Commission under this paragraph (2) shall continue in effect for the period specified by the Commission, and may be extended, except that in no event shall the Commission’s action continue in effect for more than 10 business days, including extensions. *If the actions described in subparagraph (A) involve a security future product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.* In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code, or with the provisions of section 19(c) of this title.

\* \* \* \* \*

#### REGISTRATION AND REGULATION OF BROKERS AND DEALERS

SEC. 15. (a) \* \* \*

\* \* \* \* \*

(b)(1) \* \* \*

\* \* \* \* \*

(11) *BROKER/DEALER REGISTRATION WITH RESPECT TO TRANSACTIONS IN SECURITY FUTURE PRODUCTS.*—

(A) *NOTICE REGISTRATION.*—

(i) *CONTENTS OF NOTICE.*—Notwithstanding paragraphs (1) and (2), a broker or dealer required to register only because it effects transactions in security future products on an exchange registered pursuant to section 6(g) may register for purposes of this section by filing with the Commission a written notice in such form and containing such information concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. A broker or dealer may not register under this paragraph unless that broker or dealer is a member of a national securities association registered under section 15A(k).

(ii) *IMMEDIATE EFFECTIVENESS.*—Such registration shall be effective immediately upon filing of the written notice with the Commission, except that such registration shall not be effective if the registration would be subject to suspension or revocation under paragraph (4).

(iii) *SUSPENSION.*—Such registration shall be suspended immediately if a national securities association registered pursuant to section 15A(k) of this title suspends the membership of that broker or dealer.

(iv) *TERMINATION.*—Such registration shall be terminated immediately if any of the above stated conditions for registration set forth in this paragraph are no longer satisfied.

(B) *EXEMPTIONS FOR REGISTERED BROKERS AND DEALERS.*—A broker or dealer registered pursuant to the requirements of subparagraph (A) shall be exempt from the following provisions of this title and the rules thereunder with respect to transactions in security future products:

(i) Section 8.

(ii) Subsection (a) of section 10.

(iii) Section 11.

(iv) Subsections (c)(3) and (c)(5) of this section.

(v) Section 15B.

(vi) Section 15C.

(vii) Subsections (d), (e), (f), (g), (h), and (i) of section 17.

(12) *EXEMPTION FOR SECURITY FUTURE PRODUCT EXCHANGE MEMBERS.*—

(A) *REGISTRATION EXEMPTION.*—A natural person shall be exempt from the registration requirements of this section if such person—

(i) is a member of a designated contract market registered with the Commission as an exchange pursuant to section 6(g);

(ii) effects transactions only in securities on the exchange of which such person is a member; and

(iii) has no direct contact with public customers.

(B) *OTHER EXEMPTIONS.*—A natural person exempt from registration pursuant to subparagraph (A) shall also be exempt from the following provisions of this title and the rules thereunder:

- (i) Section 8.
- (ii) Subsection (a) of section 10.
- (iii) Section 11.
- (iv) Subsections (c)(3), (c)(5), and (e) of this section.
- (v) Section 15B.
- (vi) Section 15C.
- (vii) Subsections (d), (e), (f), (g), (h), and (i) of section 17.

\* \* \* \* \*

(i) RULEMAKING TO EXTEND REQUIREMENTS TO NEW HYBRID PRODUCTS.—

(1) \* \* \*

\* \* \* \* \*

(6) DEFINITIONS.—For purposes of this subsection:

(A) NEW HYBRID PRODUCT.—The term “new hybrid product” means a product that—

(i) was not subjected to regulation by the Commission as a security prior to the date of the enactment of the Gramm-Leach-Bliley Act;

(ii) is not an identified banking product as such term is defined in section 206 of such Act; **[and]**

(iii) is not an equity swap within the meaning of section 206(a)(6) of such Act**[.]**; and

(iv) is not a security future product.

\* \* \* \* \*

#### REGISTERED SECURITIES ASSOCIATIONS

SEC. 15A. (a) \* \* \*

\* \* \* \* \*

(k) LIMITED PURPOSE NATIONAL SECURITIES ASSOCIATION.—

(1) REGULATION OF MEMBERS WITH RESPECT TO SECURITY FUTURE PRODUCTS.—A futures association registered under section 17 of the Commodity Exchange Act shall be a registered national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security future products pursuant to section 15(b)(11).

(2) REQUIREMENTS FOR REGISTRATION.—Such a securities association shall—

(A) be so organized and have the capacity to carry out the purposes of the securities laws applicable to security future products and to comply, and (subject to any rule or order of the Commission pursuant to section 19(g)(2)) to enforce compliance by its members and persons associated with its members, with the provisions of the securities laws applicable to security future products, the rules and regulations thereunder, and its rules;

(B) have rules that—

(i) are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, including rules governing sales practices and the advertising of security future prod-

ucts comparable to those of other national securities associations registered pursuant to subsection (a); and

(ii) are not designed to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the association;

(C) have rules that provide that (subject to any rule or order of the Commission pursuant to section 19(g)(2)) its members and persons associated with its members shall be appropriately disciplined for violation of any provision of the securities laws applicable to security future products, the rules or regulations thereunder, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction; and

(D) have rules that ensure that members and natural persons associated with members meet such standards of training, experience, and competence necessary to effect transactions in security future products and are tested for their knowledge of securities and security future products.

(3) **EXEMPTION FROM RULE CHANGE SUBMISSION.**—Such a securities association shall be exempt from submitting proposed rule changes pursuant to section 19(b) of this title, except that—

(A) the association shall file proposed rule changes related to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security future products, sales practices, advertising of security future products, or standards of training, experience, competence, or other qualifications for security future products for persons who effect transactions in security future products or rules effectuating the association's obligation to enforce the securities laws pursuant to section 19(b)(7);

(B) the association shall file pursuant to sections 19(b)(1) and 19(b)(2) proposed rule changes related to margin, except for changes resulting in higher margin levels; and

(C) the association shall file pursuant to section 19(b)(1) proposed rule changes that have been abrogated by the Commission pursuant to section 19(b)(7)(C).

(4) **OTHER EXEMPTIONS.**—Such a securities association shall be exempt from and shall not be required to enforce compliance by its members, and its members shall not, solely with respect to their transactions effected in security future products, be required to comply, with the following provisions of this title and the rules thereunder:

(A) Subsections (b)(1), (b)(3), (b)(4), (b)(5), (b)(8), (b)(10), (b)(11), (b)(12), (b)(13), (c), (d), (e), (f), (g), (h), and (i) of this section.

(B) Subsections (d), (f), and (k) of section 17.

(C) Subsections (a), (f), and (h) of section 19.

(l) **PROCEDURES AND RULES FOR SECURITY FUTURE PRODUCTS.**—A national securities association registered pursuant to subsection (a) shall, not later than one year after the date of enactment of the Commodity Futures Modernization Act of 2000, implement the pro-

*cedures specified in section 6(h)(5)(A) of this title and adopt the rules specified in subparagraphs (B) and (C) of section 6(h)(5) of this title.*

\* \* \* \* \*

#### DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS

##### SEC. 16. (a) \* \* \*

\* \* \* \* \*

*(f) TREATMENT OF TRANSACTIONS IN SECURITY FUTURE PRODUCTS.—The provisions of this section shall apply to ownership of and transactions in security future products as if they were ownership of and transactions in the underlying equity security. The Commission may adopt such rules and regulations as it deems necessary or appropriate in the public interest to carry out the purposes of this section.*

\* \* \* \* \*

#### ACCOUNTS AND RECORDS, EXAMINATIONS OF EXCHANGES, MEMBERS, AND OTHERS

##### SEC. 17. (a) \* \* \*

\* \* \* \* \*

[(b) All records of persons described in subsection (a) of this section are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency for such persons as the Commission or the appropriate regulatory agency for such persons deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title: *Provided, however,* That the Commission shall, prior to conducting any such examination of a registered clearing agency, registered transfer agent, or registered municipal securities dealer for which it is not the appropriate regulatory agency, give notice to the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer of such proposed examination and consult with such appropriate regulatory agency concerning the feasibility and desirability of coordinating such examination with examinations conducted by such appropriate regulatory agency with a view to avoiding unnecessary regulatory duplication or undue regulatory burdens for such clearing agency, transfer agent, or municipal securities dealer. Nothing in the proviso to the preceding sentence shall be construed to impair or limit (other than by the requirement of prior consultation) the power of the Commission under this subsection to examine any clearing agency, transfer agent, or municipal securities dealer or to affect in any way the power of the Commission under any other provision of this title or otherwise to inspect, examine, or investigate any such clearing agency, transfer agent, or municipal securities dealer.]

##### (b) RECORDS SUBJECT TO EXAMINATION.—

###### (1) PROCEDURES FOR COOPERATION WITH OTHER AGENCIES.—

*All records of persons described in subsection (a) are subject at any time, or from time to time, to such reasonable periodic, spe-*

cial, or other examinations by representatives of the Commission and the appropriate regulatory agency for such persons as the Commission or the appropriate regulatory agency for such persons deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title if the Commission, prior to conducting any such examination of a—

(A) registered clearing agency, registered transfer agent, or registered municipal securities dealer for which it is not the appropriate regulatory agency, gives notice to the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer, of such proposed examination and consults with the appropriate regulatory agency concerning the feasibility and desirability of coordinating such examinations conducted by the appropriate regulatory agency with a view to avoiding unnecessary regulatory duplication or undue regulatory burdens for such clearing agency, transfer agent, or municipal securities dealer; or

(B) broker or dealer registered pursuant to section 15(b)(11), exchange registered pursuant to section 6(g), or national securities association registered pursuant to section 15A(k) gives notice to the Commodity Futures Trading Commission of such proposed examination and consults with the Commodity Futures Trading Commission concerning the feasibility and desirability of coordinating such examination with examinations conducted by the Commodity Futures Trading Commission with a view to avoiding unnecessary regulatory duplication or undue regulatory burdens for such broker or dealer or exchange.

(2) **FURNISHING DATA AND REPORTS TO CFTC.**—The Commission shall notify the Commodity Futures Trading Commission of any examination conducted of any broker or dealer registered pursuant to section 15(b)(11), exchange registered pursuant to section 6(g), or national securities association registered pursuant to section 15A(k) and, upon request, furnish to the Commodity Futures Trading Commission any examination report and data supplied to the Commission in connection with such examination.

(3) **USE OF CFTC REPORTS.**—The Commission shall, to the fullest extent possible, use the reports of examinations of any broker or dealer registered pursuant to section 15(b)(11) or exchange registered pursuant to section 6(g) made by the Commodity Futures Trading Commission, a national securities association registered pursuant to section 15A(k), or an exchange registered pursuant to section 6(g).

(4) **LARGE TRADER REPORTING.**—The Commission and the Commodity Futures Trading Commission shall jointly prescribe rules to require large trader reporting with respect to security future products. Such rules shall specify a reporting level for each security future product, a format for reporting, and the procedures for filing such reports with the Commission and the Commodity Futures Trading Commission.

(5) **RULE OF CONSTRUCTION.**—Nothing in this subsection shall be construed to impair or limit (other than by the require-



*ment of prior consultation) the power of the Commission under this subsection to examine any clearing agency, transfer agent, or municipal securities dealer, broker or dealer registered pursuant to section 15(b)(11), exchange registered pursuant to section 6(g), or national securities association registered pursuant to section 15A(k), or to affect in any way the power of the Commission under any other provision of this title or otherwise to inspect, examine, or investigate any clearing agency, transfer agent, or municipal securities dealer, broker or dealer registered pursuant to section 15(b)(11), exchange registered pursuant to section 6(g), or national securities association registered pursuant to section 15A(k).*

\* \* \* \* \*

#### NATIONAL SYSTEM FOR CLEARANCE AND SETTLEMENT OF SECURITIES TRANSACTIONS

SEC. 17A. (a)(1) The Congress finds that—

(A) \* \* \*

\* \* \* \* \*

*(E) The clearance and settlement of transactions in over-the-counter derivatives through clearing agencies registered with the Commission will reduce systemic risk and provide stability to financial markets during times of market disorder.*

(2)(A) The Commission is directed, therefore, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents, to use its authority under this title—

(i) \* \* \*

(ii) to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, [and commodity options] *commodity options, and over-the-counter derivatives;*

in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection.

\* \* \* \* \*

(b)(1) \* \* \*

\* \* \* \* \*

(3) A clearing agency shall not be registered unless the Commission determines that—

(A) Such clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions *and derivative agreements, contracts, and transactions* for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of this title and the rules and regulations thereunder, to enforce (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of this title) compliance by its participants

with the rules of the clearing agency, and to carry out the purposes of this section.

\* \* \* \* \*

(F) The rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions *and, to the extent applicable, derivative agreements, contracts, and transactions*, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this section or the administration of the clearing agency.

\* \* \* \* \*

(7) *A clearing agency that is regulated directly or indirectly by the Commodity Futures Trading Commission through its association with a designated contract market for security future products, and that performs the functions of a clearing agency only with respect to security future products and transactions in securities effected pursuant to the rules of the designated contract market with which such agency is associated, is exempted from the provisions of this section and the rules and regulations thereunder, except that any clearing agency that performs the functions of a clearing agency with respect to security future products must coordinate with and develop fair and reasonable links with any and all other clearing agencies that perform the functions of a clearing agency with respect to security future products, in order to permit security future products to be purchased on a national securities exchange or national securities association registered pursuant to section 15A(a) and offset on another national securities exchange or national securities association registered pursuant to section 15A(a).*

(8) *A registered clearing agency shall be permitted to provide facilities for the clearance and settlement of any derivative agreements, contracts, or transactions that are excluded from the Commodity Exchange Act, subject to the requirements of this section and to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.*

\* \* \* \* \*

#### REGISTRATION, RESPONSIBILITIES, AND OVERSIGHT OF SELF-REGULATORY ORGANIZATIONS

SEC. 19. (a) \* \* \*

\* \* \* \* \*

(b)(1) \* \* \*

\* \* \* \* \*

## (7) SECURITY FUTURE PRODUCT RULE CHANGES.—

(A) *FILING REQUIRED.*—A self-regulatory organization that is an exchange registered with the Commission pursuant to section 6(g) of this title or that is a national securities association registered pursuant to section 15A(k) of this title shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule change or any proposed change in, addition to, or deletion from the rules of such self-regulatory organization (hereinafter in this paragraph collectively referred to as a “proposed rule change”) that relates to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security future products, sales practices for security future products for persons who effect transactions in security future products or rules effectuating such self-regulatory organization’s obligation to enforce the securities laws. Such proposed rule change shall be accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments concerning such proposed rule change.

(B) *FILING WITH CFTC.*—A proposed rule change filed with the Commission pursuant to subparagraph (A) shall be filed concurrently with the Commodity Futures Trading Commission. Such proposed rule change may take effect upon filing of a written certification with the Commodity Futures Trading Commission, upon a determination by the Commodity Futures Trading Commission that review of the proposed rule change is not necessary or upon approval of the proposed rule change by the Commodity Futures Trading Commission.

(C) *ABROGATION OF RULE CHANGES.*—Any proposed rule change of a self-regulatory organization that has taken effect pursuant to subparagraph (B) may be enforced by such self-regulatory organization to the extent such rule is not inconsistent with the provisions of this title, the rules and regulations thereunder, and applicable Federal law. At any time within 60 days of the date of the filing of a written certification with the Commodity Futures Trading Commission, the date the Commodity Futures Trading Commission determines that review of such proposed rule change is not necessary, or the date the Commodity Futures Trading Commission approves such proposed rule change, the Commission, after consultation with the Commodity Futures Trading Commission, summarily may abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of paragraph (1), if it appears to the Commission that such proposed rule change unduly burdens competition, conflicts with the securities laws, does not promote efficiency, or is inconsistent with the public interest and the protection of investors. Commission action pursuant to the preceding sentence shall not affect the

validity or force of the rule change during the period it was in effect and shall not be reviewable under section 25 nor deemed to be a final agency action for purposes of section 704 of title 5, United States Code.

(D) REVIEW OF RESUBMITTED ABROGATED RULES.—

(i) PROCEEDINGS.—Within 35 days of the date of publication of notice of the filing of a proposed rule change that is abrogated in accordance with subparagraph (C) and refiled in accordance with paragraph (1), or within such longer period as the Commission may designate up to 90 days after such date if the Commission finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall—

(I) by order approve such proposed rule change; or

(II) after consultation with the Commodity Futures Trading Commission, institute proceedings to determine whether the proposed rule change should be disapproved.

Proceedings under subclause (II) shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded within 180 days after the date of publication of notice of the filing of the proposed rule change. At the conclusion of such proceedings, the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to 60 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the self-regulatory organization consents.

(ii) GROUNDS FOR APPROVAL.—The Commission shall approve a proposed rule change of a self-regulatory organization under this subparagraph if it finds that such proposed rule change promotes efficiency, does not unduly burden competition, does not conflict with the securities laws, and is not inconsistent with the public interest or the protection of investors. The Commission shall disapprove such a proposed rule change of a self-regulatory organization if it does not make such finding. The Commission shall not approve any proposed rule change prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

(8) DECIMAL PRICING.—Not later than 9 months after the later of the dates specified in section 6(g)(5), all self-regulatory organizations listing or trading security future products shall file proposed rule changes necessary to implement decimal pricing of security future products. The Commission may not require such rules to contain equal minimum increments in such decimal pricing.

(9) CONSULTATION WITH CFTC.—

(A) CONSULTATION REQUIRED.—The Commission shall consult with and consider the views of the Commodity Futures Trading Commission prior to approving a proposed rule change filed by a national securities association registered pursuant to section 15A(a) or a national securities exchange subject to the

provisions of subsection (a) that primarily concerns conduct related to transactions in security futures products, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor.

(B) *RESPONSES TO CFTC COMMENTS AND FINDINGS.*—If the Commodity Futures Trading Commission comments in writing to the Commission on a proposed rule that has been published for comment, the Commission shall respond in writing to such written comment before approving the proposed rule. If the Commodity Futures Trading Commission determines, and notifies the Commission, that such rule, if implemented or as applied, would—

(i) adversely affect the liquidity or efficiency of the market for security future products; or

(ii) impose any burden on competition not necessary or appropriate in furtherance of the purposes of this section, the Commission shall, prior to approving the proposed rule, find that such rule is necessary and appropriate in furtherance of the purposes of this section notwithstanding the Commodity Futures Trading Commission's determination.

(C) *CONSIDERATIONS OF EXISTING REGULATION.*—In approving rules described in subparagraph (A), the Commission shall consider the sufficiency and appropriateness of then existing laws and rules applicable to security futures products.

\* \* \* \* \*

(d)(1) \* \* \*

\* \* \* \* \*

(3) *The provisions of this subsection shall apply to an exchange registered pursuant to section 6(g) of this title or a national securities association registered pursuant to section 15A(k) of this title only to the extent that such exchange or association imposes any final disciplinary sanction for—*

(A) *a violation of the federal securities laws or the rules and regulations thereunder; or*

(B) *a violation of a rule of such exchange or association, as to which a proposed change would be required to be filed under section 19 of this title, except that, to the extent that the exchange or association rule violation relates to any account, agreement, or transaction, this subsection shall apply only to the extent such violation involves a security future product.*

\* \* \* \* \*

#### LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID AND ABET VIOLATIONS

SEC. 20. (a) \* \* \*

\* \* \* \* \*

(d) *Wherever communicating, or purchasing or selling a security while in possession of, material nonpublic information would violate, or result in liability to any purchaser or seller of the security under any provision of this title, or any rule or regulation thereunder, such conduct in connection with a purchase or sale of a put, call, straddle, option, [or privilege] privilege, or security future*

*product* with respect to such security or with respect to a group or index of securities including such security, shall also violate and result in comparable liability to any purchaser or seller of that security under such provision, rule, or regulation.

\* \* \* \* \*

#### INVESTIGATIONS; INJUNCTIONS AND PROSECUTION OF OFFENSES

##### SEC. 21. (a) \* \* \*

\* \* \* \* \*

(i) *INFORMATION TO CFTC.*—*The Commission shall provide the Commodity Futures Trading Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any broker or dealer registered pursuant to section 15(b)(11) or any exchange registered pursuant to section 6(g).*

#### CIVIL PENALTIES FOR INSIDER TRADING

##### SEC. 21A. (a) AUTHORITY TO IMPOSE CIVIL PENALTIES.—

(1) JUDICIAL ACTIONS BY COMMISSION AUTHORIZED.—Whenever it shall appear to the Commission that any person has violated any provision of this title or the rules or regulations thereunder by purchasing or selling a security while in possession of material, nonpublic information in, or has violated any such provision by communicating such information in connection with, a transaction on or through the facilities of a national securities exchange or from or through a broker or dealer, and which is not part of a public offering by an issuer of securities other than [standardized options, the Commission—] *standardized options or security future products, the Commission—*

(A) \* \* \*

\* \* \* \* \*

#### EFFECT ON EXISTING LAW

SEC. 28. (a) Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of. Except as otherwise specifically provided in this title, nothing in this title shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this title or the rules and regulations thereunder. No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of “bucket shops” or other similar or related activities, shall invalidate any put, call, straddle, option, privilege, or other security *subject to this title*, or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of [any such instrument, if such instrument is traded pursuant to rules and regulations of a self-regu-

latory organization that are filed with the Commission pursuant to section 19(b) of this Act】 *any such security.*

\* \* \*  
(e)(1) \* \* \*

\* \* \*  
(4) *The provisions of this subsection shall not apply with regard to securities that are security future products.*

\* \* \*

## SECURITIES INVESTOR PROTECTION ACT OF 1970

\* \* \*

### SEC. 3. SECURITIES INVESTOR PROTECTION CORPORATION.

(a) CREATION AND MEMBERSHIP.—

(1) \* \* \*

\* \* \*

(2) MEMBERSHIP.—

(A) MEMBERS OF SIPC.—SIPC shall be a membership corporation the members of which shall be all persons registered as brokers or dealers under section 15(b) of the 1934 Act, other than—

(i) persons whose principal business, in the determination of SIPC, taking into account business of affiliated entities, is conducted outside the United States and its territories and possessions; [and]

(ii) persons whose business as a broker or dealer consists exclusively of (I) the distribution of shares of registered open end investment companies or unit investment trusts, (II) the sale of variable annuities, (III) the business of insurance, or (IV) the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts[.]; and

(iii) *persons who are registered as a broker or dealer pursuant to section 15(b)(11)(A) of the Securities Exchange Act of 1934.*

\* \* \*

### SEC. 16. DEFINITIONS.

For purposes of this Act, including the application of the Bankruptcy Act to a liquidation proceeding:

(1) \* \* \*

\* \* \*

(14) SECURITY.—The term “security” means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, any collateral trust certificate, preorganization certificate or subscription, transferable share, voting trust certificate, certificate of deposit, certificate of deposit for a security, *or any security future as that term is defined in section 3(a)(55)(A) of the Securities Exchange Act of 1934*, any investment contract or certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or mineral royalty or lease (if such in-

vestment contract or interest is the subject of a registration statement with the Commission pursuant to the provisions of the Securities Act of 1933), any put, call, straddle, option, or privilege on any security, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase or sell any of the foregoing, and any other instrument commonly known as a security. Except as specifically provided above, the term “security” does not include any currency, or any commodity or related contract or futures contract, or any warrant or right to subscribe to or purchase or sell any of the foregoing.

### SECURITIES ACT OF 1933

\* \* \* \* \*

#### DEFINITIONS

SEC. 2. (a) DEFINITIONS.—When used in this title, unless the context otherwise requires—

(1) The term “security” means any note, stock, treasury stock, *security future*, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

\* \* \* \* \*

(3) The term “sale” or “sell” shall include every contract of sale or disposition of a security or interest in a security, for value. The term “offer to sell”, “offer for sale”, or “offer” shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The terms defined in this paragraph and the term “offer to buy” as used in subsection (c) of section 5 shall not include preliminary negotiations or agreements between an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer) and any underwriter or among underwriters who are or are to be in privity of contract with an issuer (or any person directly or indirectly controlling or controlled by an issuer, or



under direct or indirect common control with an issuer). Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security. *Any offer or sale of a security future product by or on behalf of the issuer of the securities underlying the security future product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities.*

\* \* \* \* \*

(16) *The terms “security future”, “narrow-based security index”, and “security future product” have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.*

\* \* \* \* \*

#### EXEMPTED SECURITIES

SEC. 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

(1) \* \* \*

\* \* \* \* \*

(14) *Any security future product that is—*

(A) *cleared by a clearing agency registered under section 17A of the Securities Exchange Act of 1934 or exempt from registration under subsection (b)(7) of such section 17A; and*

(B) *listed on a national securities exchange or a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.*

\* \* \* \* \*

#### CIVIL LIABILITIES ARISING IN CONNECTION WITH PROSPECTUSES AND COMMUNICATIONS

SEC. 12. (a) IN GENERAL.—Any person who—

(1) offers or sells a security in violation of section 5, or

(2) offers or sells a security (whether or not exempted by the provisions of section 3, other than **【paragraph (2)】** *paragraphs (2) and (14) of subsection (a) thereof*), by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a

material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission,

shall be liable, subject to subsection (b), to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

\* \* \* \* \*

## SECTION 2 OF THE INVESTMENT COMPANY ACT OF 1940

### GENERAL DEFINITIONS

SEC. 2. (a) When used in this title, unless the context otherwise requires—

(1) \* \* \*

\* \* \* \* \*

(36) “Security” means any note, stock, treasury stock, *security future*, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

\* \* \* \* \*

(52) *The terms “security future” and “narrow-based security index” have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.*

\* \* \* \* \*

## INVESTMENT ADVISERS ACT OF 1940

\* \* \* \* \*

### TITLE II—INVESTMENT ADVISERS

\* \* \* \* \*

## DEFINITIONS

SEC. 202. (a) When used in this title, unless the context otherwise requires, the following definitions shall apply:

(1) \* \* \*

\* \* \* \* \*

(18) “Security” means any note, stock, treasury stock, *security future*, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, or warrant or right to subscribe to or purchase any of the foregoing.

\* \* \* \* \*

(27) *The terms “security future” and “narrow-based security index” have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.*

\* \* \* \* \*

## REGISTRATION OF INVESTMENT ADVISERS

SEC. 203. (a) \* \* \*

(b) The provisions of subsection (a) shall not apply to—

(1) \* \* \*

\* \* \* \* \*

(4) any investment adviser that is a charitable organization, as defined in section 3(c)(10)(D) of the Investment Company Act of 1940, or is a trustee, director, officer, employee, or volunteer of such a charitable organization acting within the scope of such person’s employment or duties with such organization, whose advice, analyses, or reports are provided only to one or more of the following:

(A) any such charitable organization;

(B) a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940; or

(C) a trust or other donative instrument described in section 3(c)(10)(B) of the Investment Company Act of 1940, or the trustees, administrators, settlors (or potential settlors), or beneficiaries of any such trust or other instrument; [or]

(5) any plan described in section 414(e) of the Internal Revenue Code of 1986, any person or entity eligible to establish and maintain such a plan under the Internal Revenue Code of

1986, or any trustee, director, officer, or employee of or volunteer for any such plan or person, if such person or entity, acting in such capacity, provides investment advice exclusively to, or with respect to, any plan, person, or entity or any company, account, or fund that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940<sup>[1]</sup>; or

(6) *any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor whose business does not consist primarily of acting as an investment adviser, as defined in section 202(a)(11) of this title, and that does not act as an investment adviser to (A) an investment company registered under title I of this Act, or (B) a company which has elected to be a business development company pursuant to section 54 of title I of this Act and has not withdrawn its election.*

\* \* \* \* \*

